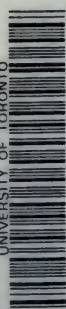


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THE  
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*περὶ παντὸς τὴν ἐλευθερίαν*

VOLUME XXIX  
FOR THE YEAR 1913

# Selden Society

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OF THE HISTORY OF ENGLISH LAW.

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*Selden Society*

YEAR BOOKS OF EDWARD II.

VOL. VIII.

THE EYRE OF KENT  
6 & 7 EDWARD II.

A.D. 1313-1314

VOL. III.

EDITED  
FOR THE SELDEN SOCIETY

BY

WILLIAM CRADDOCK BOLLAND

OF LINCOLN'S INN AND THE NORTH EASTERN CIRCUIT, BARRISTER-AT-LAW

*He [Serjeant Maynard] had such a relish of the old year books that he carried one in his coach to divert him in travel, and said he chose it before any comedy.*

ROGER NORTH

*C'est toute la tragédie, toute la comédie humaine que met en scène sous nos yeux l'histoire de nos lois. Ne craignons point de le dire et de le montrer.*

ALBERT SOREL

169  
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LONDON

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1913

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# LIST OF MANUSCRIPTS USED IN THE PREPARATION OF THIS VOLUME <sup>1</sup>

	Referred to as	YEAR BOOKS OF THE EYRE OF KENT OF 6 AND 7 EDWARD II
1	a	British Museum, Hargrave 210, ff. 49-71
2	aa	„ „ „ „ ff. 180-214
3	β	Cambridge University Library, Ff. III. 12; ff. 2-19
4	γ	Bodleian Library, Tanner 13, ff. 415-485
5	γγ	„ „ „ ff. 119-141
6	δ	British Museum, Harleian 1062, ff. 13-31
7	ε	„ „ Additional, 32086, ff. 6d.-13d.; 106-125
8	ζ	Lincoln's Inn, Hale MSS., 141, ff. 9-18, 22-47, etc.
9	η	British Museum, Cotton, Faustina C. VI. ff. 26-35
10	θ	Lincoln's Inn, Hale MSS., 45. (A seventeenth-century transcript), ff. 32-72
11	κ	British Museum, Egerton, 2811, ff. 111-123
12	κκ	„ „ „ „ ff. 1-21
13	λ	„ „ Harleian 453, ff. 43-5; 1 <i>et sqq.</i>

## ABBREVIATIONS USED IN THIS VOLUME.

E.R. The Roll of Juries and Assizes of the Eyre of Kent of 6 and 7 Edward II.

F.A. Fitzherbert's *Abridgement*.

F.N.B. Fitzherbert's *Natura Brevium*.

O.E.D. The Oxford English Dictionary.

<sup>1</sup> See also the list of manuscripts prefixed to Volume I.



# INTRODUCTION

## THE TABLE OF THE MATTERS.

1. Of the Cases in this Volume.
2. Of the Assize of Fresh Force.
3. Of the Salaries of the Justices and the Fees of the Clerks.
4. Of some Miscellaneous Matters.

### (1) OF THE CASES IN THIS VOLUME.

THE first volume of the Year Books of the Eyre of Kent contained reports of the *Pleas of the Crown* and of the quasi-criminal cases falling under the titles of *Attaint* and *Trespas*. The second volume contained reports of civil actions under the titles of *Account*, *Ael*, *Admeasurement of Pasture*, *Annuity*, *Cessavit*, *Common of Pasture*, *Cosinage*, *Covenant*, *Darrein Presentment*, *De Cartis Reddendis*, *Debt*, *Deceit*, *Dower*, *Ejection from Wardship*, *Entry*, *Excommunication*, *Formedon*, *Guaranty*, *Guaranty of Charters*, *Imprisonment* and *Mesne*.<sup>1</sup> This third and concluding volume contains the remaining titles of *Mortdancestor*, *Non-claim*, *Novel Disseisin*, *Nuper Obiit*, *Quare non admisit*, *Quod permittat*, *Quo Warranto*, *Replevin*, *Scire facias*, *Variance*, and a collection of *Notes* on various matters.

Some observations upon some of the reports hereinafter following may properly find a place at the beginning of this Introduction. All our manuscripts contain reports of the assize of Mortdancestor *Attoe v. Smith* (pp. 1-11). The particular question which interested the reporters was whether the defendant could have aid of her infant grandson in the following circumstances. The action was brought to recover certain land to which the plaintiff alleged that he was entitled as his father's heir. At the time of the commencement of the action this land was held by one Mabel, the widow of Walter the farrier, who claimed to hold it for the term of her life in virtue of a grant made by John of Hartlip, who, we gather, was her father. According to Mabel's contention, though she herself was entitled, by this grant, to hold the land for the term of her life, the fee and right had descended to her infant grandson; and she prayed the Court that she might have aid of him.

<sup>1</sup> The reason of this alphabetical arrangement is explained in Vol. I. p. ci.

This was really a plea in delay of the action. If the prayer had been granted, the infant would have prayed his age and would have been allowed it, and the whole matter would have been hung up until the infant came of age. The plaintiff met Mabel's prayer by offering to aver that John of Hartlip had never, subsequently to the death of the plaintiff's father, been so seised of the land in demand as to be capable of conveying it. The Court had to decide whether, in face of this averment, they could grant Mabel's prayer for aid. The arguments of counsel on both sides are set out at length in the various reports and the Court seems to have been divided in opinion. No ruling, however, was actually given, for the parties agreed upon a settlement, in accordance with which judgment in the action was given in favour of the plaintiff.

We have several reports of *Goldsmith v. Attfield* (p. 12), but the various reporters have played such tricks with the names and even the sex of the parties concerned that it would be difficult to gather the real facts of the case if we had not the record to help us. The story seems to be this. One Christiana held land ; originally, it would appear, by way of dower. The fee and right of this land were in Richard Spicer, who was the uncle of Isabel, the wife of Baldwin ; Isabel and Baldwin being the demandants. When Richard died the fee and right in the land descended to his son and heir, Thomas. After Richard's death and during Christiana's seisin, Thomas is said to have released all his right in the land held by Christiana to Christiana and her heirs. Christiana's joint heiresses were Joan Attfield, the actual defendant in the action, and Marjory Mortimer, her sister. It seems necessary to suppose that Thomas, Richard's son and heir, was now dead, without leaving issue ; and that Isabel claimed to be Richard's heiress. She and her husband seek to have it found by an assize that Richard died seised in his own right of the land which Joan Attfield and Marjory Mortimer claim to hold as their mother's heiresses. For some reason or other Marjory and her husband do not care to defend the action, and disclaim all interest and tenancy. Joan actively defends. She begins by saying that, as she holds the land in parcenry with her sister Marjory, she must have aid of her sister. The Court agrees and summons Marjory. Marjory does not come ; and the Court thereupon rules that, the plaintiffs being entitled to an answer, Joan must defend the action alone. Joan now pleads the release by Thomas, Richard's heir, to her mother during her mother's seisin, which she proves by the tender of Thomas's deed, and her own succession as one of her mother's heiresses. The plaintiffs deny the genuineness of the deed, and the Court directs this issue to be tried, ordering the contested deed to be impounded in the meanwhile. On the day appointed for the trial the plaintiffs fail to appear, and the

Court proceeds to give judgment in Joan's favour, and orders the deed to be returned to her.

The facts and allegations in *Cowyn v. Iremonger* (p. 16), an action brought by a writ of mortdancestor, are strangely like those in the cosinage case of *Hammil v. Chalon* reported in vol. ii, p. 4; and the cryptic remarks of Goldington J. in the first version of the former case touching the advantage accruing to the demandant from the right of battle are very like those attributed to Spigurnel J. in the second version of *Hammil v. Chalon*.

In *Trill v. May* (p. 22) the relationship of the parties is a little complicated. Four brothers, Alan, Walter, Ralph and Guy, were at some time previous to the commencement of the action in possession, as parceners, of certain land, clearly of gavelkind tenure. Alan died, and his brothers, Walter, Guy and Ralph, enter upon his share of the family heritage as his brothers and alleged heirs. Then Walter dies, leaving three sons, Richard, Thomas and John, who enter upon his share as his sons and heirs. Ralph dies, leaving a daughter Alice, who inherits her father's share. Consequently, at the time when the action was commenced, of the share originally held by Alan one third was in the possession of his brother Guy, one third in the possession of his niece Alice, and one ninth in the possession of each of his nephews, Richard, Thomas and John. The case of the plaintiff Juliana, the wife of Walter Trill, with whom her husband was necessarily joined as co-demandant, is that she is the daughter and, consequently, the heiress of Alan, and she seeks to recover her father's land from the five present tenants of it. And here it should be noted that three several actions by the same plaintiffs against (1) Richard, Thomas and John, (2) Alice, (3) Guy are heard simultaneously. Each set of defendants at once say that they hold with all the others as parceners and cannot answer without their coparceners. This was to some extent a dilatory plea, as two of the parceners were under age; and if they had been summoned in aid they would have pleaded their age, and the whole matter would have been adjourned till their age. But it was also more than a merely dilatory plea. If all the coparceners were made technically privy to the action, then if judgment went against one of them and he lost a part of the land which had been allotted to him as his share at the general division he would be entitled to compensation by his co-parceners out of their share; but if they were not privy to the action they would be under no obligation to compensate him, and he alone would have to bear the whole loss. Hence the defendants in each action are anxious that they should have aid of the defendants in the other two actions; *i.e.* that these should be made privy to the action and so have the right to say whatever seemed



good to them to say in what was practically their own defence. Neither reports nor record tell us what happened. The probability is that after an adjournment the parties agreed upon a settlement.

The report of *Etchingham v. Sandwich* (p. 26) is not very lucid, and some indication of the tenour of the pleadings may be helpful. The demandants, John of Etchingham and Petronel his wife, allege that Petronel's father, John Andrew, died seised in his own right of the Manor of Bossington, and that Petronel is consequently entitled to it as her father's heiress. At the time of the bringing of the action this manor was in the possession of the defendant, Nicholas of Sandwich, and the demandants claim it by a writ of mortdancestor. The defendant begins his defence by praying aid of his son, a merely dilatory plea which is refused by the Court for reasons stated. Then he alleges that John Andrew did not and could not have died seised of the tenements in demand, because some time previous to his death he had exchanged them for other tenements in Holewest which, he said, the demandants actually then held in succession to him; and a deed executed by John Andrew is put in in proof. We are not told the exact terms of this deed, but SPIGURNEL J. seems to have ruled that, *prima facie*, it proved only such a simple grant as would not in itself be a bar to an assize. So an assize is awarded, which, on the evidence, finds in favour of the defendant.

The report of the anonymous case on p. 33 is noticeable for the little lesson in the art of pleading which SPIGURNEL J. gave *Bacon*. The question whether a writ of mortdancestor would lie between lord and tenant was argued in *Higham v. Bartelot* (p. 35). The defence maintained that it would not, and that the writ proper to the circumstances was a writ of customs and services. The Court ruled that the lord might use either the one or the other, as he considered most to his advantage. In the following anonymous case (p. 37) it is worth noting that by reason of the nature of the pleading the assize was turned into an inquest.

Again, in the anonymous case on pp. 38-40 the relationship of the parties is not made too clear, but we gather that the story of the action and the facts leading up to it were probably as follows. One Richard had two sons Thomas and John by his wife Christiana. When Richard died Thomas assigned certain land to the widow by way of dower; Christiana subsequently married a second husband, by whom she had two daughters, Maud and Cecily. Thomas died, apparently without issue, during Christiana's lifetime. Upon Christiana's death her daughters entered upon the land in demand as their mother's joint heiresses. John seeks to recover the land by a writ of mortdancestor. He lays the latest seisin 'in demesne as of fee' in his father upon the day that he died.



John's case, of course, is that Christiana had only a life interest, and that the proprietary right belonged to himself as his father's heir. Counsel for Maud and Cecily make a point here, or try to do. You allege, they say, that Christiana held the land only by way of dower, and that upon her death Maud and Cecily entered. But Maud and Cecily are strangers, they are not of kin to you or your father; and if a stranger enter after the death of a tenant in dower the recovery is to be got, not by a writ of mortdancestor, but by a writ of intrusion. Your writ is the wrong writ and must fail. This seems a reasonable exception, but the Court, for reasons which are not given, would not allow it. Then another objection is taken, that not Richard, but Thomas, his deceased son, was the latest seised, while the writ lays the latest seisin in Richard. Judgment of the writ. The answer to this is the allegation that Thomas never had seisin of the land. Christiana was entitled to it as his father's widow, and Thomas's assignment of it to her was nothing but a recognition on his part of her right to it for her life; and such assignment was no evidence of his seisin. The Court took this view, and counsel for Maud and Cecily, having been twice beaten on technical pleas, now defend upon the facts. Thomas, they say, entered upon his father's death, and after assigning the land in demand to Christiana by way of dower, subsequently, during her seisin, released and quit-claimed all his right in it to her; and Thomas's deed is put in in proof. This was the issue that went before the assize. We are not told the result, but if the deed proved a release by Thomas to Christiana during her seisin, judgment for the defendants would necessarily follow.

Both Tottell's and Lambarde's versions of the *Customs of Kent* say that the lord of whom the tenements are holden has merely the power of appointing a guardian of infant heirs to gavelkind land, and, further, that he must appoint the next in blood to whom the inheritance cannot descend, and that he must take nothing for so appointing.<sup>1</sup> The finding of the assize in *Hellis v. Sandwich* (p. 43) is not in accordance with either of these versions. They say that, according to the custom of gavelkind, the lord ought to have the wardship, though the nearest in blood is entitled to acquire it from him at his own cost. This differs in two important matters from the printed *Customs*; both in the initial accrual of the wardship to the lord and in his right to valuable consideration for transferring it. It is to be noted also from this report that a guardian appointed by the lord had the power of assigning the

<sup>1</sup> Lambarde's version in the *Perambulation of Kent*, p. 576 (ed. 1596), with which Tottell's version (*Statutes of the Realm*, I, 224) is practically identical, reads: 'Et si le heir, ou lez heirs, seit,

ou seyent de deins le age de xv. ans, seit la nourriture de eux baille per le seignour al plus procheyn del sank, a qui heritage ne peut descendre, issi que le seignour pur le bail rien ne prengne.'

guardianship, and that such assignee had the like power. Nothing is said as to any limitation of such assignment to any particular class of persons.

*Chamberlain v. Ashwood* (p. 44) is clumsily reported and is not wholly intelligible. The parties mentioned are Agnes, her daughter Ellen, Ellen's husband, J. Mauleverer, Ellen's sons, Robert and Thomas Chamberlain, this latter being the demandant in the action, and Roger of Ashwood, the defendant. The demandant seeks to recover the land in demand on the ground that his mother died seised of it in her own right and survived her son Robert. The defendant pleads that Ellen had formally admitted that the fee was in Austin of Ripon, and that Austin granted him, the defendant, an estate tail. The text seems to make Roger say that Austin enfeoffed him of an estate tail, but a feoffment would have been impossible while Ellen was still seised, as she apparently was at the time when it was alleged that the estate was conveyed to Roger. Later on in the report it is said that it was Robert whom Ainger enfeoffed. A possible explanation is that an estate tail was first granted to Robert, and that subsequently, after Robert had died without leaving heir of his body, Austin granted a similar estate to Roger. As the report stands the issue left to the assize was whether Ellen died seised in her own right, surviving her son Robert; or whether she held only for her life, the fee tail being in Robert in virtue of the alleged grant by Austin. We are told nothing about the result of the action. And now a word or two of Austin of Ripon. He stands out as a real person who has far more interest for us than has any other of those concerned in this action. He was an Apprentice of the law. His name appears as counsel in the Year Books of his time; and in the reign of Edward I he wrote a dissertation upon ancient demesne, *Tractatus de antiquo dominico*, of which copies are to be found in several manuscript collections of legal treatises.<sup>1</sup>

In the anonymous case reported on p. 48 the ancestor upon whose death action was brought had died abroad. To meet such a case a special writ was provided.<sup>2</sup> The ordinary writ of mortdancestor laid that the ancestor was seised on the day on which he died. The special writ laid that he was seised on the day on which he took ship. 'For, if he died outside this realm, how can the people of this country know whether he died seised in his own demesne or not?' This particular action was brought under the ordinary writ, laying that the ancestor was seised on the day he died. The objection is taken on behalf of the defence that the wrong writ has been used; and averment that the

<sup>1</sup> See *Year Books* of 20 and 21 Edward I (Rolls Series) p. xviii.

<sup>2</sup> See Fitzherbert's *Natura Brevium*, 196.



ancestor took ship is offered. Counsel for the demandant could not deny this, and so his writ was quashed. The anonymous case on pp. 48-9 has been carelessly reported. The issue left to the assize was whether certain tenements were the joint purchase of one Amelia and John her husband or whether they were Amelia's in her own sole right, John holding them after her death by courtesy only. But there is no scrap of evidence reported in support of the latter contention, and strong and apparently uncontested evidence in support of the former one. As the report stands there was absolutely nothing to go to a jury upon this point. The preliminary objection taken by the defence upon the alleged conviction of Amelia's son, also called John, for felony subsequently to his mother's death, seems to have been dropped.

The action of *Latimer v. Thwing*<sup>1</sup> (p. 50) calls for notice here for more than one reason. The parties are no mere Johns and Joans of this village or that, but very definite men and women who played some part in the history of their time and have left a memorial of themselves in contemporary records. Moreover, this assize of mortdancesthorpe was not heard during our Eyre of Kent, nor in Kent at all.<sup>2</sup> The date of it can be assigned with accuracy. It could not have been as late as April 20, 1295 (23 Edward I), when the King ordered Thomas de Normanville, his escheator beyond Trent, to cause William le Latymer the younger and Lucy<sup>3</sup> his wife, daughter of Robert of Thwing, to have seisin of all the lands that her father held of the King at the time of his death<sup>4</sup>; and it could not have been as early as February 22, 1294 (22 Edward I), for we have two orders of that date by the King to the two Escheators which show that at that time Lucy was still unmarried<sup>5</sup>; and so, as the writ was challenged in Hilary term, the hearing must have commenced in the Hilary term of 1295. The venue was in York, though I can find no record of the assize nor of any commission for it. Various technical exceptions are taken at York against the awarding of the assize, and then the hearing is apparently adjourned to Westminster. Here the same arguments are raised again and enlarged, and there are further adjournments; and the preliminary question of whether there shall or shall not be an assize never gets determined, and the whole business apparently comes to end by the tender of the King's protection for Marmaduke of Thwing, who was probably employed in the royal service abroad.

<sup>1</sup> Thwing is a parish in the East Riding of Yorkshire about eight miles W.N.W. of Bridlington.

<sup>2</sup> As to these *placita forinseca*, see vol. ii. pp. xli-ii.

<sup>3</sup> For a history of 'this well-born but

infamous woman' see *The Guisborough Chartulary*, I, 123. (Publications of the Surtees Society, vol. 86.)

<sup>4</sup> *Calendar of Close Rolls*, 1289-1296, p. 411.

<sup>5</sup> *Ibid.* p. 344.

The report of *Tank v. Kady* (p. 58), which is another of the cases hereinafter reported which were certainly not heard during the Eyre of Kent, must be mentioned here as disclosing what looks like a very early judicial joke, perhaps the earliest one of which we have knowledge. An assize of mortdancestor is sought against one whom the reporter calls Adam Kady. Adam says that the assize should not be awarded, for he is the eldest son of his father, one Richard, and entered the land in demand as his father's heir. To this plea the demandant, who claims as Richard's son and heir, replies that Adam was not Richard's son. 'You must say whose son he is if you want to allege that he is a stranger,' METINGHAM C.J. rules. 'He is anybody's son,' is the reply of the demandant's counsel; the phrase probably being the vernacular equivalent of the technical *filius nullius*. And it would have been better for him if counsel had stuck to the technical phrase, for then he would not have laid himself open to the Chief Justice's retort: 'Then he is your son.' However, the answer served its purpose. It raised the question of legitimacy. The Court could not try this, and so the demandant took naught by his writ.

Sir John of Frissingfield and William of Goldington had been commissioned to take the assize of novel disseisin, *Terry v. Ronwell*, but the coming of the Eyre had superseded their commission; and the assize was taken by the Justices of the Eyre in virtue of their comprehensive commission to hold all pleas. The defendant comes in person and asks to have *oyer* of the patent, that is the original commission to Frissingfield and Goldington. What his exact reason for taking this course was is not clear; but it was probably either a belief that the terms of the patent were not identical with those of the writ; or that one of the justices named in the original commission, Sir John of Frissingfield, was dead; and that either of these cases might furnish grounds for getting the writ abated. But the general commission of the Justices of Eyre made the existence of any other commission immaterial; and if the existence of any other commission were immaterial, *a fortiori* the death of one of the Justices to whom an immaterial commission had been addressed was immaterial. Though *Stonore* chooses to raise the point other counsel at once tell him there is nothing in it; and thereupon *Stonore*, who apparently does not care to acknowledge that there is nothing in his point, waives it on the ground that he does not know whether Sir John of Frissingfield is dead or alive. As a matter of fact, Sir John was alive; and he lived for at least another ten years.

The facts in the two actions of *Sturry v. Cobham* were as follows. John of Gosshall held the manor of Gosshall in his own right. Some years previously to the actions he had granted an annual rent of twenty-six



shillings and eightpence charged upon his manor, which he subjected to distress should the rent not be paid, to Robert of Sturry. 'A long time afterwards' he mortgaged the manor under the provisions of the Statute Merchant to Master James of Cobham to secure the repayment to James of £240. Two years before the hearing of the actions the rent-charge was two years in arrear, and Robert of Sturry levied distress, as he was entitled to do. By that time the manor had in some way or other, we are not told how, passed into the hands ('deuenit ad manus') of Thomas of Wrotham, and, upon his death, into those of Alice, his widow, and Geoffrey, his son. Alice and Geoffrey and one Thomas Tonk or Tuk, concerning whose interest we are told nothing, replevied the distress, and so disseised Robert of his rent-charge; and this by the finding of the assize. Robert consequently recovered his rent-charge, while he was amerced for his false claim against James of Cobham and Henry, John of Gosshall's heir, neither of whom had wronged him. The second action was made necessary through the omission to join Henry as a defendant. The first writ was abated by the judges because of the omission of Henry, and Robert was amerced. In the second action Robert does join Henry and then is amerced for making a claim against him. Robert seems to have been badly advised. He should not have sued James. If he sued James it was necessary to join Henry, lest, in the case of a judgment against James, Henry's estate should be adversely affected without his being party to the action and having an opportunity to defend his interests. But he had no action against James, and, consequently, none against Henry. It is noteworthy that the finding of the assize was accepted by counsel for the defence without any demur or argument. Yet it seems to involve the settlement of a fine point of law quite outside the province of a jury, as to which we should have expected some reference to and some ruling by the Justices. The question they apparently settled for themselves was this: 'In what circumstances does replevin constitute an act of disseisin?' Britton is the only direct authority on the point that I can find; and we gather from him<sup>1</sup> that when a tenant replevies reasonable distress out of the hands of the lord he makes himself the peer of his lord and tacitly denies the seignory and thereby commits an act of disseisin. But a man who has naught but a small rent-charge seems a long way from being lord or from having any seignory to be denied.

In *Terry v. Ronwell* (p. 60) as well as in the anonymous case reported on pp. 74-5 the Justices ruled that an assize of novel disseisin in assessing damages must have regard only to the issues of the soil. For damages in respect of aught else the demandant must proceed by way of a writ

<sup>1</sup> *Britton*, I, p. 281 (ed. Nichols).

of trespass. 'And this, in truth,' says one of our reporters, 'set men wondering.' And the wonder arose because the ruling seemed to these men of old to be in flat opposition to the statutes in such case provided. One reporter refers to the first Statute of Westminster, another to the second (p. 74). The first Statute of Westminster, cap. xxxvij, lays down that in case of disseisin done with 'robbery of any manner of goods or moveables the plaintiff shall recover his seisin and his damages as well of the goods and moveables aforesaid as of the rest . . . and in like manner it shall be done of disseisin with force and arms although there be no robbery.' In a disseisin done with violence or accompanied with robbery the successful plaintiff's damages are not to be restricted to loss arising in respect of the issues of the soil. That seems quite clear law. In the case we are considering the plaintiff's buildings were completely destroyed and timber to the value of twenty pounds was carried away. *Prima facie* there seems strong evidence of both violence and robbery. But what we want to know, and what the reporters do not tell us, is when the buildings were pulled down and when the timber was carried away. If the disseisin were effected by the forcible ejection of the plaintiff, and the destruction of the buildings and the asportation of the timber were synchronous incidents of such disseisin, then the ruling of the Justices might very well set everyone wondering. On the other hand, if the disseisors had peacefully, though without title, abated themselves on the tenements, or had acquired possession from some other who had so done, and had then or subsequently pulled down the buildings and removed the timber, the case does not seem to come certainly within the provisions of the statute. The reference to 'the second Statute of Westminster which refers to robbery accompanying disseisin' clearly involves a mistake, for the second statute makes no such reference, though it does (cap. xxxix) give a definition of issues which might possibly afford ground for objection to the Justices' ruling. 'Let the Sheriff know that rents, corn in the grange and all moveables except horse-harness and household stuff, be contained within the name of issues.' But this definition seems to have been formulated for a special purpose, the information of the sheriffs, and not as a basis for assessing damages in novel disseisin in respect of the issues of the soil.

*Walton v. Hoath* (p. 79) is to be noticed by reason of a careless piece of pleading by *Stonore*. The plaintiff seems to have had only the flimsiest point to rely upon, i.e. that the defendant's ultimate recovery of the tenements now in demand was got upon a *scire facias* directed to one who was no party to the original action; and *Stonore*, in his plea on behalf of the defence, admitted this fact, thereby implicitly granting that the plaintiff was entitled to have his assize. *Toudeby*, who was also



of counsel for the defence, recognised the consequences of *Stonore's* carelessness and restated the plea on behalf of the defendant in such a way as to avoid making the dangerous admission. The reports say nothing definitely as to the result of the action, but the Eyre Roll tells us that the demandant was nonsuited.

The anonymous case on p. 85 is interesting from the ruling of the Court that when a man pledges his land he has no intention of conferring an estate of inheritance, but intends merely to give security for the repayment of a loan. The facts were these. B. enfeoffs S. of certain land, having the intention to grant an estate of inheritance. S. thereupon executes a bond obliging himself to pay six marks to B. by a certain day, and reciting that in default of such payment B. shall be at liberty to re-enter the land of which he has enfeoffed S. Before the day assigned for payment, S. enfeoffs C. of the same land. C. enters. S. does not pay the six marks to B., and B. thereupon brings an assize of novel disseisin against C. The Court held that no bond that S. could give could entitle B. to enter; and it would seem that the only value the bond had was as evidence to support a writ of debt. The Note that follows this case, though it clearly refers to the same set of facts, gives the story somewhat differently, making the borrower, and not his feoffee, the demandant. But according to both report and note *Bacon* was blamed. The report does not tell us why he was blamed, but, if the facts be as there set out, one would suppose that it was for advising the wrong writ, the one proper to the circumstances being a writ of debt and not one of novel disseisin. But if the debtor were the demandant, as the Note makes him to be, then *Bacon's* fault consisted in admitting that his client had entered under the condition in the bond; for, as the Court points out, in the report, the obligee has no intention of conferring an estate of inheritance when he executes such a bond; and if the creditor admits that he entered in virtue of such a bond he, *ipso facto*, confesses himself a disseisor.

The facts in *Broomfield v. Broomfield* (p. 87) are not very easily disentangled. Henry, the son of Robert of Broomfield, seeks to recover a certain freehold of which he complains that he has been disseised by William the son of William of Broomfield, William the Clerk, John and Margaret, the son and daughter-in-law of this latter William, and Thomas of Stone. The only one of these defendants who actively defends is John the son of William the Clerk. The other defendants disclaim all interest in the land and deny that they have disseised the demandant or done him any wrong. John's story is that Robert Broomfield died seised in his own right of the land in demand, leaving a son William, who also died, leaving a son, likewise called William, a baby only a few



months old. John says that this baby William, apparently when he was about six months old, enfeoffed him—it would be interesting to know what form of enfeoffment was actually used by this six-months-old feoffor—and that his possession is consequently quite regular, and that he has done no one any wrong. But Henry, the demandant, has a material addition to make to this story. Robert, he says, left two sons, himself and his deceased brother William. The land is gavelkind and therefore descended to himself and William in equal shares. When Robert died Henry was beyond sea, and could not, therefore, enter upon his inheritance at once; but as soon as he returned he claimed his moiety of the land and entered upon it, but John, Margaret and Thomas ejected him. Such is Henry's story. The assize accepted it and embodies it in their finding; and so the Court gives judgment that Henry recover his seisin and hold in common with his parcener William, his nephew. 'And the said William and the other disseisors are in mercy.' This portion of the judgment presents difficulties. The assize did not find William to be a disseisor. They found that Henry was disseised by John, Margaret and Thomas. And William, Margaret and Thomas denied that they were in possession; and not even the record gives us any assistance towards solving the puzzle of Margaret's and Thomas's connexion with the matter. The plea of the infant William may, of course, be ignored. It was not his own plea. It was put into his mouth by John. And it may be noted that the Court refused to discuss his alleged enfeoffment of John. Even if any such enfeoffment as alleged ever took place, it was effectually annulled by the judgment of the Court, which gave Henry seisin of half his father's land to hold in common with his nephew William, thus restoring his seisin to the latter, if he had ever lost it.

In *Lewis v. Monner* (p. 90) we have an example of how easily a man may unwittingly become a disseisor and make himself liable to the penalties attaching to one so found. Robert Lewis had a son, also called Robert, born before wedlock. He had three daughters born of the same mother as was Robert, within wedlock. When he died no question seems to have arisen as to his son's legitimacy. This son appears to have entered into possession of his father's lands of inheritance, and the whole family continued to live together. Robert the younger's uprightness was the first cause of his own undoing. He proceeded to assign to his mother half of his father's land by way of dower. The mother thereupon left Robert's house and went to live upon the land assigned to her; and her daughters joined her there. Perhaps it was then that Robert's illegitimacy was first recognised. At any rate it was not till then that the three sisters sought to recover for themselves such portion of the family

inheritance as Robert still retained. Robert pleads simply that he entered upon the land as his father's son and heir, and denies that he disseised his sisters ; and, in fact, as his counsel points out, they withdrew themselves from the land of their own accord. But when Robert is found by the assize to be illegitimate, his sisters' right is incontestable, and the mere fact of Robert having put in a plea of any sort in his own justification is held by the Court to constitute him an actual disseisor.

In *Burn v. Burton* (p. 96) the demandant seeks to recover the office of porter or custodian of the great door of the Archbishop's palace at Canterbury. The action is brought by a writ of novel disseisin under the provisions of chapter xxv. of the second Statute of Westminster, which enacts that, to provide a more speedy recovery, this writ shall hold place in more cases than it has done hitherto ; and amongst these cases is the keeping of gates, '*custodia portarum.*' Before the passing of this Act recovery of a portership could have been got only by a *precipe quod reddat*. The better opinion seems to be that the lord of the soil upon which the demandant seeks to recover a *profit à prendre* must be named in this latter writ ; the reason for this being that if he were not named and so made privy to the action, he might find his land permanently charged to his detriment without his having had any opportunity of showing cause why it should not be so charged. In another and anonymous case reported on p. 134 the Court held that a statute does not change the process given by the common law unless another process be provided by the statute, and the particular point upon which this ruling was given was the joinder of a defendant. Though we have no report of the Court's ruling in *Burn v. Burton*, we may reasonably conclude that the writ was abated by reason of the non-joinder of the lord of the soil. And here a point of much practical difficulty to the demandant arises. The lord of the soil is the Archbishop of Canterbury when there is an Archbishop, but there is no Archbishop. The last one is dead and no other has been appointed in his room. The soil, it is said, is in the King's hand. The King cannot be joined as a defendant, though he can in some sort of fashion be formally notified of the recovery that is being sought, and, to that extent, be made privy to the action. Whether, in the circumstances, the Court would have been satisfied if the King had been thus notified and had raised no objection to the granting of the assize seems doubtful from STAUNTON J.'s observation that the Archbishop ought to have an opportunity of producing a possible quitclaim by the demandant. The conclusion to be drawn from the whole matter seems to be that the porter of a bishop's palace may be illegally ejected upon the death of the bishop and be left without any remedy.



until the see be filled ; and we know that it was often convenient for a mediæval king to leave a see vacant as long as possible and to retain its revenue for his own use. Note that in this case the demandant showed a written grant, thereby differentiating this case from the anonymous one reported on p. 124.

In *Marden v. Marden* (p. 102) Peter the demandant held by the custom of Kent a moiety of his deceased wife's land for the term of his life, conditionally upon his continuing unmarried. By his deceased wife he had two sons, William and Roger. William, upon the consideration of being apprenticed to the fishmongers in London, granted to his father for the term of his life all the land which he had or might have through succession to the inheritance of his mother. The terms of this grant obviously included the moiety of that moiety of the whole inheritance which his father already held by the custom of Kent for the term of his life or till a second marriage. Peter subsequently marries again. By this second marriage he would *prima facie* forfeit the whole of the moiety which he held by the custom ; and he recognised that he had at any rate forfeited the half of it to which Roger became entitled upon the marriage. But what about the other half of the moiety to which William would have undoubtedly become entitled except for the grant which he had made to his father ? This grant certainly conveyed to Peter for his life the moiety of the moiety which descended to William upon his mother's death, but did it also convey all William's interest for the term of his father's life in that moiety of a moiety which at the time of the grant his father held ? It is difficult to see how there could be any doubt upon this point ; but William, after living with his father for some time after the latter's second marriage and apparently acquiescing in his father's possession of what except for William's grant would have been William's land, ejected him ; and when Peter sought to recover the land by a writ of novel disseisin set up the extraordinary defence that the deed of grant was of no advantage to Peter ; ' for before the making of the deed and at the time of the deed the father had a customary freehold, and since the deed purports to do no more than grant a freehold to one who already had a freehold, naught can accrue by virtue of it.' But this plea was brushed aside by the Court, and judgment was given in Peter's favour, together with damages.

The two actions of *Frittenden v. Culverhouse* (p. 109) and *Frittenden v. Frittenden* (p. 111) are really one and the same. The writ in the first-named action was abated because a tenant of a part of the land in demand was not joined. The somewhat involved facts are set out with all possible clearness in the finding of the assize upon p. 113. Put

shortly they are these. One Cecily died seised in her own right of certain land. Upon her death her three brothers, Philip, Richard and Osbert, entered and held in common for a time ; the land being gavel-kind. Then Philip and Richard ejected Osbert, and agreed between themselves that Richard should hold the land to himself and his heirs upon condition of paying an annual rent to Philip for his life. Osbert brought an assize of novel disseisin and recovered a third part of the whole inheritance to be held by him in severalty, and not, as he held it previously, in common with his brothers. Richard continued to pay the whole rent agreed upon to Philip, though he held only two-thirds of the land. Then Richard died, leaving an infant son ; and the lady of the manor, Joan Culverhouse, of whom the land was holden, entered upon it, by reason of the infancy of Richard's son. While Joan was in possession Philip distrained for his rent, and Joan's bailiff replevied, thus technically disseising Philip of his rent-charge, which he now seeks to recover. A subsidiary question raised was whether Philip, in the event of his being successful, could charge Osbert's share, seeing that he then held it in severalty. But a better reason would seem to be that Osbert never consented to the land being charged. The parties were adjourned for judgment, but apparently no judgment was ever given. In *Simon v. Bristol* (p. 116) it is ruled that while a plaintiff may not put in an anticipatory answer to a possible finding favourable to the defendant's case, a defendant may plead in anticipation to a hypothetical finding in favour of the plaintiff.

The story of *Grandison v. Scoland* runs through all the three volumes of the reports of this Eyre and out into the *Coram Rege* roll of a later year. It is only in this third volume that, owing to the alphabetical arrangement which, for reasons already explained, it seemed most advisable to adopt, we get the report of the first round between the parties, fought under a writ of novel disseisin. The facts, or the alleged facts, by which the writ was supported are set out in detail in the report of the later proceedings in Attaint (printed in Volume I, pp. 158-84), when the record of the present assize of novel disseisin was formally read in court as a part of the case ; and as the record is there printed it has been considered unnecessary to repeat it in the present volume. The short facts are as follows. William Grandison complained that Frank Scoland had unlawfully disseised him of certain lands. Other defendants were joined with Scoland, but they were so joined for technical reasons only and had no real interest in the issue. The fight was between Grandison and Scoland. Scoland's defence was that the lands in question were formerly the lands of his uncle Geoffrey Scoland, who granted them to his son Richard and the heirs of his body, with remainder



to the grantor and his heirs in the event of Richard dying without legitimate issue. Richard did, in fact, die without heir of his body, and, at the time of his so dying, Walter Scoland was the grantor's heir and was entitled, so he alleged, to have possession of the land in virtue of his uncle's deed. Grandison, on the other hand, while admitting the terms of the grant to be as alleged by Scoland and that Richard died without issue, asserted that during Richard's seisin Geoffrey the grantor released and quitclaimed to Richard all his, the grantor's, interest in the land, to the effect that Richard held it thenceforward of the chief lord of the manor to which it was appurtenant, rendering therefor the accustomed services. Consequently, according to Grandison's case, when Richard died without issue the land escheated to the lord of the manor, who, at the time of Richard's death, was Grandison himself; and, as such lord, he entered thereon. The issue for the assize was a simple one of fact. 'Did Geoffrey Scoland quitclaim and release to Richard during Richard's seisin or did he not?' They found that he did, and that, consequently, Walter Scoland had unlawfully disseised William Grandison. Defeated in this action of novel disseisin, Scoland betook himself at once to a writ of formedon, supporting it by exactly the same allegations as he had relied on in his defence to the previous action, *i.e.* the grant by Geoffrey to Richard and his heirs with remainder in default of heirs to the grantor and his heirs. Grandison pleaded that Scoland's claim was based upon a title which a jury had already found to be worthless, and that he, Grandison, ought not to be called upon to answer such a claim. It must, of course, have been obvious to Scoland that Grandison would plead this defence, but he seems to have hoped that the finding by an assize of novel disseisin would not necessarily prejudice the proceedings under a writ of formedon, which was a writ of right, and consequently of a higher nature than a writ of novel disseisin. The arguments on the point are set out in Volume II, pp. 186-200. In the end Scoland's counsel submitted to a nonsuit. Then Scoland, as his only remaining resource, brought his attain of the assize of novel disseisin which originally found in Grandison's favour. The proceedings are reported at length in Volume I, pp. 158-184. In this last round he was successful, and so recovered his seisin of the lands in dispute. Grandison, however, subsequently brought the judgment of the Justices in Eyre into the King's Bench in proceedings in error and sought to have it quashed, upon the ground of various technical irregularities in the course of the previous proceedings, amongst which is the reception of the writ outside the time limited by the Statute. After several adjournments Scoland presented a letter of protection

from the King,<sup>1</sup> and thereupon was allowed to go away *sine die*; and no more comes of Grandison's appeal.

In *Anon. v. Goodyear* (p. 124) a question arises upon the interpretation of a provision of the Statute of Gloucester. The demandant brings a writ of novel disseisin against several defendants. Hamond Goodyear is the only one of these who has any effects; and the sheriff, being ordered to levy execution, thereupon distrains Goodyear for the whole amount leviable. Hamond's position is not very clear, but he does not appear to have been an actual disseisor, and his tenancy was only a yearly one. *Shardelowe*, who appeared for him, argues that the statute provides that no one shall be liable in damages for novel disseisin except for his own time. What the statute actually says is that 'everyone shall answer for his own time,' which is not quite the same thing. *BEREWIK J.*, without any argument or discussion—none, at any rate, is reported—says that the statute is not to be construed as *Shardelowe* proposes to construe it. 'Do you think,' he asks, 'that if there were twenty tenants in a disseisin and none but three of them had aught, and those three had sufficient to satisfy a distress for the whole damages, they would be discharged? And the statute must be construed thus.' In the anonymous case reported on p. 125 note the ruling that the husband of a married woman need not be joined with her as a defendant in a writ of novel disseisin unless she answer as a tenant; though, if the wife be found a disseisor, the husband will be liable in damages.

The facts in *Anon. v. Topinel* (p. 126) are somewhat extraordinary. John borrows forty-eight shillings from William. As security for the repayment of the loan he makes by deed an unconditional grant of his land to William. The deed is deposited with one Roger, and there is a parole agreement that if John repay the money borrowed by a certain day the deed is to be returned to him and is to be void. Previously to the day assigned John pays William an instalment of eleven or twelve shillings—the amount is variously stated—and afterwards, again previously to the day assigned, tenders the balance. William refuses to accept anything less than the full amount of forty-eight shillings.

<sup>1</sup> The text of the King's letter to the Justices is as follows: 'Sciatis quod suscepimus in proteccionem et defencionem nostram dilectum nobis Francionem de Scoland qui cum dilecto consanguineo et fidei nostro Rogero de mortuo mari de Widgmore in obsequio nostro per preceptum nostrum in partibus Hibernie moratur homines terras res redditus et omnes possessiones ipsius

Franconis et ideo vobis mandamus quod ipsum Franconem homines terras res redditus et omnes possessiones suas manuteneatis et defendatis non inferentes eis vel inferri permittentes iniuriam molestum dampnum aut grauamen. Et si quid eis forisfactum fuerit etc. eis sine dilacione faciatis emendari.' *Coram Rege* Roll, Mich. 8 Edward II, m. 95.



John will pay no more than the unpaid balance. Then, and still previously to the day assigned for the repayment of the loan, William goes to Roger and tells him that he will hold him harmless if he will surrender to him the deed of grant. Roger gives the deed up to William. Apparently William has been in possession of the land since the making of the deed, for we are told that John now puts himself into the tenements and that William ejects him. Then William dies, and John brings his writ of novel disseisin against his sons and heirs. There does not seem to have been any attempt to deny or to mitigate the story told by the demandant, and judgment was given that he recover his seisin; the Court adding that if William had been alive and had counterpleaded to the seisin, he would have been committed to prison for his fraud, and that moreover his executors could not recover the debt. The 'Notes' following this case and dealing with the particular circumstances in which a defendant may become a disseisor merely through counterpleading are important.

*Walton v. Beer* (p. 133) discloses certain difficulties which I am unable to solve. William and Margery his wife bring an assize of novel disseisin. Exception is taken to Margery's competence to sue by reason of her being a professed nun and having assumed the religious habit. We are further told that at the time of the hearing William was under age, which means that, according to the custom of Kent, he was not yet fifteen years old. As he could not have been married until he was fourteen years old, and as at the time of her marriage Margery could not have been any sort of a nun, and could not have become professed until a year after her initiation, it seems impossible to reconcile the facts and allegations as our report gives them. The question that was referred to Court Christian was, of course, the question whether Margery was in fact professed and whether she had assumed the habit; and it is not clear why the reporter seems to doubt the propriety of this course, which the authorities seem fully to warrant.<sup>1</sup>

To the report of *Goldsmith v. Dower* (p. 133) the reporter adds a few words of comment; and our reporters are not much given to commenting upon either the facts or the pleas of the actions they report. The short facts are that Robert and his wife sought to recover certain land from William by a writ of novel disseisin. William's answer is

<sup>1</sup> *E.g.* 'Competit etiam ei exceptio propter mortem civilem, ut si quis se religioni contulerit, et ad seculum reuersus hereditatem petierit, et quo casu ab agendo repellitur cum semel sponte renunciauerit omnibus que seculi sunt, habita tamen distinctione utrum

habitu professionis assumpserit uel non, et unde habita inde contentione inter partes, demandanda erit inquisitio ad Curiam Christianitatis, et secundum Retorum Ordinarii procedendum erit ad iudicium.' *Fleta*, lib. vi, c. 42.



that one John some time previously recovered this same land from this same Robert, and that he, William, is John's assignee. Robert cannot deny that he was found a disseisor in respect of this same land, and he cannot produce any title to it later than the finding of the assize which declared him a disseisor; and upon this the Court gives judgment in favour of William. The reporter's comment is that it was a strange thing that Robert did not try to take advantage of the fact that William was no party to the previous assize. But considering the facts upon which the Court based its judgment it is not easy to understand how Robert would have advantaged himself by such a plea; and William was John's assignee. The observation that concludes the report may be the reporter's own comment, or the words may have fallen from the Bench. 'After the husband's death, the wife will be received etc.' The meaning of this is not entirely obvious; but the probable explanation is that the land was really of the right of Joan, Robert's wife. Robert as Joan's husband had let it after some fashion to John, and then tried unsuccessfully to regain possession of it. When Robert died, his wife would no longer be bound by his action, and would be able to recover the land by a writ of entry *cui in vita*.

In the anonymous case reported on pp. 134-5 STAUNTON J. rules that a statute does not change a process prescribed by the common law unless another process be specifically provided by the statute. The facts that gave rise to this ruling are these. B. and his wife hold land jointly. B. alone pledges the land under Statute Merchant as security for a loan. This loan is not repaid within the stipulated period, and an interest as of freehold in the land is delivered to the creditor under the statute. The debtor refuses to give up possession, and the creditor brings his assize of novel disseisin. The debtor pleads that his wife must be joined, as they hold the land in demand jointly. The creditor replies that in the preliminary proceedings under the statute, B., the debtor, alone made the recognition in virtue of which he, the creditor and present demandant, got execution. He is asked by the Court how he got his freehold; and the answer is that he got it by the mere fact of B.'s recognition under the statute. Then STAUNTON J. rules that 'a statute does not change the process given by the common law unless another process be provided by statute; and though you have acquired a freehold by virtue of his recognition under the statute, the common law process is not thereby affected; and the common law process is to purchase a writ against the man and his wife, because they are joint feoffees.' And the demandant was lucky in being allowed to take out a new writ instead of having his original one abated.

The facts in *Pessendenne v. Kenardington* (pp. 135-37) as to which

both our reports agree are these. A father gave by deed an estate in certain tenements to his daughter and her husband. This husband died, and the daughter married again. The father thereupon ejected his daughter and her second husband from the tenements. They brought their assize of novel disseisin against him, and recovered possession, together with damages; and the illegality of the father's action was so flagrant that the Court committed him to prison. So far both our reports are in agreement. But there is a somewhat puzzling discrepancy. The first report says that the father covenanted to give the tenements in fee tail to his daughter by a fine to be levied in the King's Court. The second report says that he enfeoffed his daughter and her husband of them in fee. From the record we may gather that in fact the tenements were granted in fee tail. But the first report goes on to say that the daughter and her husband brought a writ of covenant against the father to enforce his agreement to grant the tenements by means of a fine, 'but the said fine was not permitted because the estate was in tail.' But there is nothing to show that the father held the tenements in tail, and there was nothing to prevent him dealing with them by means of a fine. The second report speaks, indeed, of negotiations for a fine after the tenements had been conveyed in tail, when a fine in respect of them would have been in contravention of the first chapter of the Second Statute of Westminster<sup>1</sup>; but instead of this statutory bar being alleged, we are told that the fine was not levied owing to family disagreements. Clearly there was an intention of levying a fine for some purpose, and for some reason this fine was not levied; and that seems all that we can say. The record throws no light upon the question, but it is worth while drawing attention to it here, and the uncertainty in which it must remain, as an example of the careless and unsatisfying methods of the mediæval reporter.

The *nuper obiit* action of *Gatwick v. Gatwick* (p. 152) is to be noted. Gavelkind land is held of M. by W. by the services of sowing and reaping and the like. M., it is said, holds in chief directly of the King. During W.'s seisin M. releases the land held by him from the stipulated services and regrants it to W. to be held by knight service; and the King confirms this grant. The chief issue is whether the tenure of the land was changed by M.'s deed from its former condition of gavelkind into knight service, so that the land descended thenceforth to the eldest son and was no longer partible. It was admitted that the King himself could so change the nature of gavelkind land held immediately of the Crown. The controversy was whether he could change the nature of the soil of land not held directly of the Crown. The further hearing

<sup>1</sup> See a case in point in vol. ii, p. 201.



of the case was ultimately adjourned into the Common Bench. After arguments there the King wrote to the Justices of the Common Pleas to inform them of his prerogative right of changing the tenure of gavelkind lands in Kent into knight service or serjeanty, so as to take away their partibility in descent; and he cites a charter of Edward I in support of this claim.<sup>1</sup> Thereupon the defendants Katherine and her sisters pleaded, by their guardian, that by the charter granted to John of Cobham it sufficiently appeared that the King by his charter could create *liberum feodum* as well out of tenements held of others in gavelkind as out of tenements so held of the King immediately. The hearing was further adjourned and continuances are entered for two years more, but nothing further appears on the Roll, and no judgment seems ever to have been given. The inference to be drawn would seem to be that the Justices could not see their way to accept the theory set out in the King's letter.<sup>2</sup>

The reports of *The Abbot of Battle v. The Prior of Christ Church* (pp. 161-67) contain an interesting argument as to what evidence of excommunication is necessary to deprive a plaintiff of his right to sue. It is alleged that the Abbot is excommunicate, and the evidence proffered in support of the allegation is a letter from the Bishop of Rochester stating that the Abbot has been excommunicated by reason of contumacy, without giving any details of such contumacy. Objection is taken on behalf of the Abbot that no one can be precluded from his right to sue upon the ground that he is excommunicate unless such excommunication be certified by one who has jurisdiction over him; and the Abbot, it is asserted, is within neither the Bishop's diocese nor his jurisdiction. To this objection counsel for the defendant replies that trespass confers jurisdiction, and that if the Abbot has committed trespass within the diocese of Rochester, such jurisdiction thereby, *ipso facto*, accrues to the Bishop as enables him to give a valid certificate of the Abbot's excommunication. This view seems to commend itself in principle to STAUNTON J., but he points out that the Bishop has assigned no definite reason for the excommunication, thereby leaving the Court in ignorance

<sup>1</sup> For this charter see *Calendar of Charter Rolls*, ii, p. 198. It is a charter granted to John of Cobham reciting 'whereas it is the duty of the King to cause just laws to be observed and to reform those which do not add to the strength of the realm, and whereas the custom called Gavelkind in Kent causes the division into small parcels of lands which if undivided would be a stay to the realm and provide decent victuals for many, but which, when divided, cannot

provide for any'; and then granting that all the lands which John of Cobham 'holds in fee in gavelkind in Kent shall descend to his eldest son or next heir as those lands descend which he holds by serjeanty or knight service, saving the rights of the chief lords of the fee.'

<sup>2</sup> The pleadings in Common Bench in this case may be found in the earlier editions of Robinson's *Common Law of Kent* (pp. 56-64 in the first edition).

of the facts. And so the exception is disallowed, and the case goes on. It was a well-settled principle that only the Ordinary's certificate of excommunication could be received in bar of a plaintiff's right to sue; the certificate of the bishop of the diocese in the case of laymen and the secular clergy, that of their abbot or prior in the case of the religious. Not even a certificate from the Pope, a bull under his own lead seal, would avail aught.<sup>1</sup> And if before such a bull were tendered the Justices got an inkling of what it was and whence it came, they would not even allow it to be read<sup>2</sup>; and should a hot-tempered king come to hear of the proffer, it might go hardly with him who proffered it; of which we find proof on record in the story which Serjeant Thorp told the Barons of the Exchequer in the thirtieth year of Edward III of how the King's grandfather, Edward I, had commanded that one who had communicated such a bull to the King's Treasurer should straightway be drawn to the gallows and hanged; and though Chancellor and Treasurer fell upon their knees before him and pleaded for the offender's pardon, the only mercy the King would grant was to commute the sentence into one of perpetual banishment.<sup>3</sup> And the certificate must specify with exactness the particular reason for the excommunication. It was not sufficient to say that it was for contumacy or for sundry contumacies. A quite definite cause must be assigned.<sup>4</sup> When the Ordinary himself is the defendant in an action, it seems impossible to bar a plaintiff on the ground of excommunication, no matter how fully and thoroughly he may have been excommunicated; for the only certificate of this that would be *prima facie* receivable becomes not receivable when it is the certificate of the defendant in the action, upon the principle that a man may not be both party and judge.<sup>5</sup>

Many interesting cases of *Quo Warranto* are reported in this volume. The procedure is not very clear and does not always seem consistent; but it appears, speaking somewhat generally, to have been after the fashion following. In the first place it must be noted that these writs could be tried only by the Justices of Eyre. None else were so sufficiently clothed with the King's *persona* as to have authority to hear and

<sup>1</sup> See Fitzherbert's *Abridgement*, Escomengement, 6.

<sup>2</sup> *Liber Assisarum*, 30 Edward III, p. 177, pl. 19.

<sup>3</sup> *Thorp* dit qe en temps le aiel de le Roy pur ceo qe un notifa un excommengement etc. del apostolle a Tresurier le Roy pur quoi le Roy voilla qil ust este tray e pendus e non obstant qe le Chancellor e le Treasurer pur luy

genulerunt devant le Roy uncore par agarde il forjiura le Royalme etc.' *Ibid.*

<sup>4</sup> *Hankford* tells how 'un Doctor de ley cy en le Place . . . disait a moy qe nul lettre coment qe il soit del evesque serra allow si non qe le principal cause soit compris deins le lettre.' *Year Book* of 14 Henry IV. Mich. p. 14, pl. 4.

<sup>5</sup> See Fitzherbert's *Abridgement*, Escomengement, 1, 2.



determine them.<sup>1</sup> All those who claimed to be entitled to franchises of any kind within the county were charged by the common summons of the Eyre to attend before the Justices upon the first day and make formal claim to them. These claims, it appears, might be made by the claimant in person or by his attorney or even by his bailiff, but seemingly not by counsel nor by a friend. And here it may be noted that the more prudent course to follow was to make the original claim by bailiff, for if there were any informality about it, such as would have voided the claim if recorded as being made by the claimant in person or by his attorney, and so have left him in the same position as if he had made no claim at all, such informality could be remedied when the *quo warranto* came on for hearing<sup>2</sup> if the original claim had been made by one who was only a bailiff. The reason of this was probably the well-established principle that a bailiff could do nothing to his lord's prejudice. If for any reason a claim was not made upon the first day the Justices willingly allowed it to be made on the second day,<sup>3</sup> making a note of the lateness of the claim, and 'saving the King's right.' This latter expression seems to refer to the King's right to a fine for the failure to claim on the first day.<sup>4</sup> Writs of *Quo Warranto* were based upon the claims made on the first two days of the Eyre, though, when the writs came on for hearing, the respondents not infrequently wanted to vary or amplify their claims. For instance, in *The King v. Leyburne* (p. 174) the respondent originally claimed warren in three manors. In appearing to the writ he claims it in a fourth. This is held to constitute an omission to claim originally, in respect of the fourth manor. The consequence is that the franchise in respect of this fourth manor is seized into the King's hand, but the respondent is immediately, and apparently as of right, allowed to replevy it upon paying a fine to the King. The logic of this procedure is obscure. The respondent is summoned to show by what right he claims warren in certain manors. Before giving any proof of his right he advances a claim to warren in a fourth manor, and this particular franchise or alleged franchise is thereupon seized into the King's hand. Such seizure seems very like an admission of the existence of the franchise. If there were, in fact, no such franchise, how could the King seize it? It is only when the respondent has replevied it—which seems like a further admission—that he is called upon to prove its existence. We are not told anything anywhere, so far as I have been able to discover, as to the procedure followed in these

<sup>1</sup> The statutory provisions touching writs of *Quo Warranto* are contained in the Statutes of Gloucester (6 Edward I) and of *Quo Warranto* (18 Edward I).

<sup>2</sup> See the second version of *The King*

v. *The Prior of Leeds*, p. 186.

<sup>3</sup> See vol. I, p. 50.

<sup>4</sup> See the second version of *The King* v. *Leyburne*, p. 176.



replevins. It could hardly have been anything like the procedure observed in the replevin of ordinary distress, by writ addressed to the sheriff, for the wording of such writ would have been absurdly unfitted to the case of a seizure made by the Justices of the Eyre, who were clothed with the *persona* of the King himself ; and I can find no trace of any special writ. Moreover, replevin of these franchises seems to have been given without any delay at all. The whole procedure must have been interlocutory. But note that the reason why Sir Henry of Leyburne was allowed to amend his claim was the fact that he claimed in virtue of a charter from the King. So, too, in *The King v. The Prior of Leeds* (p. 184), the respondent is allowed to amend his claim. 'He tenders,' says STAUNTON J., 'a charter from the King etc., and therefore we cannot prejudge the matter and so let him amend his claim.' On the other hand it is clearly laid down by the Justices that a respondent claiming by prescription is not entitled to amend his claim. In *The King v. The Prioress of Holywell* (p. 187) the respondent, who relied upon prescription, wanted to amend her claim ; but SPIGURNEL J. tells her 'You are now claiming these franchises by prescription ; wherefore we hold that you cannot now amend your claim, as you might have done if you had been claiming them by a charter.' And again, in the Abbess of Malling's case (p. 189), when the Abbess wanted to amend her claim to franchises held by prescription, the same Judge says : 'If you were now claiming your franchise by virtue of a charter from the King, which would be of record, the Court would allow you to disregard your original claim, but you allege naught but prescription, which must be inquired of by a jury ; so the Court is of opinion that you must not make a larger claim than you did at first.' Nevertheless in the end the Abbess was allowed to amend, and the only reason discoverable for her being allowed to do so seems to be the fact that the original claim might possibly have been made by a bailiff, who, as has been noted above, could do nothing to the prejudice of his lord. It does not appear to have been recorded who actually did make the original claim in this case. The Prior of Leeds found a like advantage in the loose way in which the record of claims was made (p. 186). A franchise quite valid in its origin might be lost by misuser or by non-user. Hence juries are frequently impanelled to find how respondents had used the franchises they claimed.

Several points of interest occur in *The King v. Badlesmere* (p. 169). upon which a definite judgment would have been valuable. The whole matter, however, was by the King's order referred to himself in Parliament, but does not appear actually to have been heard there. At any rate, no reference to it is to be found in the Rolls of Parliament. Until an adverse judgment the respondent was entitled to use the franchise

which he claimed. One point in this case may be noted here. Sir Bartholomew claims that the King's bailiff shall not distrain in respect of anything touching the King within a certain hundred except in the presence of Sir Bartholomew's own bailiff, unless the latter cannot be found. *Hartlepool*, who appeared for the King, characterises this as an impossible claim, 'for the King cannot, even by his own grant, do aught in restraint of the royal power.' And on that point he abides judgment, a judgment that seems never to have been given. Had it been given it is scarcely likely that the Court or Parliament would have accepted *Hartlepool's* too sweeping assertion, which would have made the grant of any immunity at all impossible. In the cases of *The King v. Wickham Breaux* (p. 179) and *The King v. Shirland* (p. 181) note that a franchise granted by the King by charter is forfeited upon alienation of the manor by the grantee or by his heir, while a franchise based upon prescription and held as appurtenant to the manor passes with the manor upon alienation. In *The King v. Lenham* (p. 174), where the franchises were seized into the King's hand through the respondent's failure to appear, note that if they be not replevied during the Eyre they will be lost for ever. In *The King v. Leyburne* (p. 174) the respondent, after an initial false step, seems to have been at some care that he should not lose his case. It appears that the franchises in respect of which he was summoned were of his wife's right. Being of her right it was a doubtful point of law whether he could make a good answer on her behalf; and this he should have considered before claiming the franchises at the beginning of the Eyre. They should have been claimed by his wife and himself jointly. To meet any objection that might be taken upon this point he seems to have obtained a charter from the King granting these same franchises to him and his heirs, and upon this charter he got judgment, though it seems to have been allowed by the Court that his wife held them in her own right, and that their son might claim them either as his father's heir or his mother's. A nice point would have arisen if the wife had died without leaving heir of her body by Henry, and Henry had had issue by a second wife. In *The King v. Wickham Breaux* (p. 179) we have reported an obscure discussion as to whether a man might vouch in respect of wreck and warren. The point of it was probably the question whether a view of frankpledge included these minor franchises, so that a proof of the possession of the former involved a proof of the possession of the latter. *The Mirror of Justices*<sup>1</sup> includes inquiry as to wreck of the sea as one of the articles of a view of frankpledge, but says nothing about warren; and the statute *De Visu Franciplegii* (attributed to 17 or 18 Edward II.) makes no reference to either.

<sup>1</sup> Selden Society Series, vol. 7, p. 39.



Neither the note on p. 193 nor the shorter one on p. 182, detailing various articles included in the view of frankpledge, includes either wreck of the sea or waif; but these lists do not profess to be exhaustive.

## (2) OF THE ASSIZE OF FRESH FORCE

The reports of the assize of mortdancestor *Capedot v. Baynton* (pp. 41-2) are of especial interest and value as providing us with the key to a cryptic remark by Glanvill that the assize of mortdancestor does not lie in respect of tenements held by burgage tenure, *because there is another assize which has been established for the profit of the realm*<sup>1</sup>—a remark which has remained a puzzle to commentators and legal historians.<sup>2</sup> The demandants in that case seek to recover certain tenements in Canterbury by a writ of mortdancestor. In Canterbury, as in many other towns, land was held by burgage tenure, the main characteristic of which was that land held by it was devisable. Devisable land or land held by burgage tenure could not be recovered by a writ of mortdancestor. This was well-established law.<sup>3</sup> But what was to take its place? Glanvill's dark saying does not help us to an answer. Bracton says nothing at all as to the course to be taken. *Capedot v. Baynton* tells us certainly that the writ proper to the circumstances was that of Fresh Force. The history of this writ cannot be written yet. There seems to be no sort of statutory authority for it. From the *Vieux Natura Brevium* it appears that it was a writ which lay only in a town which possessed the franchise of having all pleas touching land and tenements lying within it heard and determined within it. 'Note that when the King has granted to the city of London or to

<sup>1</sup> Item ratione Burgagii cessare solet Assisa (sc. de morte antecessoris) per aliam Assisam ex causa maioris utilitatis in regno constitutam. Glanvill, lib. xiiij, cap. ii.

<sup>2</sup> 'Already in Glanvill's day the burgage tenement was a recognised exception from the general rule. We are told that the assize of mortdancestor will not lie for such a tenement because there is another assize which has been established for the profit of the realm. These words apparently refer us to some ordinance of Henry II which we have not yet recovered, but which may still be lurking in the archives of our boroughs.' Pollock and Maitland, *History of English Law* (2nd ed.) vol. II, p. 330. See also Somner's *Treatise of Gavelkind* (2nd ed.), p. 97, correcting his reference to Glanvill, where 'lib. 11' should be 'lib. 13.'

<sup>3</sup> In burgis non iacet assisa mortis

antecessoris. Bracton, f. 272. Cedit assisa (sc. mortis antecessoris) propter consuetudinem loci ut in ciuitatibus burgis et uillis et terris et tenementis que sunt de perquisito sicut in ciuitate London et alibi de terris et tenementis que vendi possunt sicut catallum. Bracton, f. 264. Mortdancestor ne gist pur terres devisable par testament. Fitzherbert, N.B. 196 I. Yet *Laufer* said, apparently without being contradicted, that the mortdancestor would lie in respect of devisable tenements in York. *Year Book*, 35 Edward I (Rolls Series), p. 456. In the Hereford Eyre of 20 Edward I it is said that 'in a vill and places where tenements are devisable, Mortdancestor does not lie for tenements which are devised. But otherwise if they are not.' *Year Book*, 20 Edward I (Rolls Series), p. 26.

other vill that its citizens shall not be impleaded in respect of land or tenements lying within their franchise, nor of aught else, outside that same franchise, they shall use the bill which is called Fresh Force and is akin to assize of novel disseisin, Mortdancestor or Intrusion. But they must bring it within forty days from the time of title accruing to them; otherwise the said citizens must have another writ out of Chancery.<sup>1</sup> This seems to confine the assize to towns possessing a particular and not very common franchise.<sup>2</sup> A reference in the *Liber Albus* does not carry us any further, for London, like Canterbury, possessed this particular franchise, but the reference is important in another respect as giving forty weeks instead of forty days as the period of limitation. Whether this extended limitation was peculiar to London or whether it is a mistake for the forty days of the old *Natura Brevium*—which is followed, as will appear shortly, by Fitzherbert in his new *Natura Brevium*—we have no means of determining. ‘The assizes of novel disseisin called Fresh Force in respect of disseisin of lands and tenements and rents within the city of London done within forty weeks are holden and determinable before the two sheriffs and the coroner.’<sup>3</sup> The record of an assize of Fresh Force held in Oxford<sup>4</sup> in 12 Edward III gives us another condition precedent, viz. that the demandant must have been in peaceful possession for forty weeks before the alleged disseisin. And at Oxford, too, as in the city of London, the limitation within which the assize must be brought is forty weeks, not days, from the time of the disseisin.<sup>5</sup> Fitzherbert tells us that ‘there is also another suit which lieth in a city or borough for lands or tenements, by usage and custom of the city, and that is by bill without any writ out of the chancery; and the same is called a bill of *fresh force*, or an assize of *fresh force*, and lieth only where a man is disseised of his lands or tene-

<sup>1</sup> Et nota qe lou le roy ad graunt fraunchis al cite de Loundres ou a autre ville qe ilz ne serra my emplede des terres ou dez tenementz deins leur fraunchis ne dautre chos hors de mesme la fraunchis ilz purront aver vn byll qe est appelle Fresshe force en nature Dassise de nouvel disseisin Mortdances-tour ou Intrusion mes il couient qe il soit port deins xl. iors apres title accrue et si nemie donques couient qe les ditz cytezens eient autre bref hors de la Chauncerie. *Vieux Natura Brevium* (ed. 1525), 111 b.

<sup>2</sup> As a matter of fact Canterbury claimed this particular franchise. See vol. I, p. lxiii.

<sup>3</sup> Les assises de Nouvelle Disseisine appelez Fresheforce des terres et tene-

mentz et rentz deinz la citee de Loundres de disseisines faitz deinz les quarant semaines sount tenuz et terminables devaunt les deux Viscountz et le Coroner. *Liber Albus* (Rolls Series, xii., vol. I, p. 195). And note that there seems to have been no French or Latin equivalent of Fresh Force. The word is never translated from the vernacular; for ‘*frisca forcia*’ is the vernacular travestied, not translated.

<sup>4</sup> The judgment was brought into the King’s Bench in Proceedings in Error, and the local record of the assize is incorporated with the record of the proceedings in the King’s Bench. See *Year Book* of 15 Edward III (Rolls Series), Appendix A.

<sup>5</sup> The demandant was ‘Magister



ments after the death of his ancestor, or after the death of his tenant for life, or in tail, or in dower, or the like ; now within forty days after the title accrued unto him, he may sue this bill of *fresh force*, and shall make protestation to sue in the nature of what writ he will, as assise *de mortdancestor*, or assise of *novel disseisin*, or *intrusion*, or of *formedon*, or in the nature of any other writ, as his case doth require ; but after the forty days past after the title accrued to him he ought to sue a writ out of the chancery.<sup>1</sup> And note here that Fitzherbert, following the writers of the old *Natura Brevium* and the *Liber Albus*, says nothing of quiet possession for forty weeks or for any other term as a condition precedent to an assise of Fresh Force, and that he follows the old *Natura Brevium* as to the limitation of forty days within which the assise must be sued for, differing on that point from the *Liber Albus* and the Oxford record, which give forty weeks as the period limited. 'After the forty days past after the title accrued to him he ought to sue a writ out of the chancery.' From this we may fairly infer that a writ for an assise of Fresh Force could not be had from the chancery ; that it was a matter of customary law, and that the proceedings were by bill either in Eyre or in the franchise court. But what is the writ that the dilatory plaintiff must sue out of Chancery if he has allowed the period limited to pass by without taking action ? It seems certainly and unconditionally laid down by the early authorities that a mortdancestor does not lie in towns in respect of devisable land ;<sup>2</sup> and as Fresh Force is explained as being the local substitute for Novel Disseisin, Mortdancestor, Intrusion, Formedon, or any other [possessory] writ, and as affording the proper remedy which, in ordinary circumstances, would be had by actions after these forms, it seems a reasonable inference to suppose that no possessory writ would lie after the expiration of the period limited, and that the writ out of the Chancery of which a dilatory plaintiff must avail himself was a writ of right. A further question arises upon comparing Fitzherbert with the Oxford record. An assise of Fresh Force, according to Fitzherbert, is the proper means of recovery in towns of tenements that would be recover-

Robertus de Trengre, Custos Domus Scholarium de Mertone Oxonie.' He said in his replication before the local court that the custom of Oxford was that whoever has been seised of any tenement 'pacifice per quadraginta septimanas clamando illud esse liberum tenementum suum quocunque titulo aut colore ad illud euenerit quod si ipse eiectus fuerit de illo tenemento post predictas quadraginta septimanas per quemcunque fuerit nisi fuerit per iudicium super breue domini Regis de assisa vel alterius brevis quod ille

sic eiectus recenter post illam eiectionem uidelicet infra quadraginta septimanas a tempore eiectionis predictae habebit de illa eiectione recuperare suum per billam de frisca forcia qua seisina per quadraginta septimanas obtenta et continuata cognita seu per uerdictum inuenta sic eiectus seisinam suam predictam recuperabit.'—*Year Book of 15 Edward III* (Rolls Series), pp. 478-79.

<sup>1</sup> *Natura Brevium*, f. 7.

<sup>2</sup> But see note 3 on p. xxxvi.



able elsewhere by one or other of several possessory writs. But if, as in Oxford, possession for forty weeks, or, indeed, possession at all, be a necessary condition precedent, then Fresh Force could only be used as the local substitute for Novel Disseisin. If the plaintiff had had quiet possession for a day only or claimed seisin upon the death of his ancestor or by the form of the gift or in some other way, what means of recovery had he? A writ of right only? So *Passeley* tells us on p. 41.

The record of *Capedot v. Baynton* in the Eyre Roll gives no hint that an assize of Fresh Force is the method of recovery proper to the circumstances. It is only from the reports in the Year Books that we gather so much. The writ of mortdancestor is met by the plea that tenements in Canterbury are devisable and that consequently the writ of mortdancestor does not lie. The plea holds good and the action is dismissed.<sup>1</sup> The law seems so plain and certain that it is a little puzzling to find people bringing actions which any lawyer could, one would suppose, have told them must fail. References to the Assize of Fresh Force in the Year Books are very rare, and we may perhaps find the reason of this in the fact that the Assize seems to have lain only in towns which had the franchise of having all pleas touching their inhabitants heard and determined within them; and so did not come within the sphere of the law reporter and the Year Books until the judgment of the local court was brought into the superior court in proceedings in error<sup>2</sup> or unless the action happened to be tried in Eyre. Of an action of Fresh Force tried in Eyre I have come across no example, though *Capedot v. Baynton* ought to have afforded us one, but does not.

What, then, is the conclusion of the matter? As we gather it from our authorities, it seems to be this, in the widest circumstances. If an inhabitant of a town that has the franchise of having all actions touching its own citizens heard and determined within the town be

<sup>1</sup> The record of the case is:—‘Assisa uenit recognitura si Werina Copedot soror Nicholai Copedot et Thome fratrum eius fuit seisita in dominico suo ut de feodo de uno messuagio et una shoppa cum pertinenciis in Cantuaria die quo obiit et si etc.’ The defendants plead ‘quod non debent ei inde ad hoc breue respondere quia dicunt quod predicta tenementa sunt in Cantuaria et quod tenementa in Cantuaria existencia sunt legabilia et per breue assise mortis antecessoris non sunt placitabilia etc. unde petunt iudicium de breue etc.’ As the plaintiffs cannot deny this they are amerced for their false claim, and the

defendants go away *sine die* (E.R. m. 10). The plea in a similar case heard during this same Eyre was somewhat wider:—‘quod omnia tenementa in ciuitate Cantuarie existencia sunt legabilia ita quod huius modi breue assise mortis antecessoris non habet locum in aliquibus tenementis infra predictam ciuitatem existentibus secundum consuetudinem hucusque usitatam in eadem ciuitate.’ (*Gilemyn v. Fyndount*, E.R. m. 25.)

<sup>2</sup> See *Year Book* of 19 Edward III (Rolls Series), Trin., No. 52, p. 236; and *Year Book* of 12 Henry IV, Hil., plea 2. p. 12; and plea 14, p. 17.

disseised of a tenement, then if he take action to recover it within a certain time of such disseisin—a time that is variously stated to be forty days or forty weeks—he must take that action by means of an assize of Fresh Force. If he neglect to take action within the time limited he can avail himself only of a writ of right. But the writ of right was of no use to a man who claimed only a possessory right and not a proprietary right in the tenements of which he alleged that he had been disseised. Moreover the proceedings under a writ of right, even for the plaintiff who might use it, were generally very long and wearisome, liable to frequent and protracted interruptions by essoins, which were more freely allowed under this writ than under any other and were to be obtained upon almost any pretext. The dilatory plaintiff who, having only a possessory right, could not avail himself of this writ, seems to have had no remedy left to him if he had neglected to deliver his bill of Fresh Force within the period limited, or if, in towns where customs similar to those of Oxford prevailed, his complaint was not practically one of novel disseisin. This must have led to much hardship ; and, seeing how few traces of the assize are to be found in the Year Books, we may perhaps guess that the Justices and Serjeants found some way of avoiding the old rule of law that possessory writs did not lie in respect of land and tenements held by burgage tenure.

### (3) OF THE SALARIES OF THE JUSTICES AND THE FEES OF THE CLERKS.

It will not be out of place here to say something touching the remuneration of the Justices and their staff of clerks. Five Justices and we cannot say how many clerks were working in this Eyre of Kent. How and what were they paid ? And first as to the Justices. At this time Justices were of two degrees. There were those who were permanent Justices of the Courts of King's Bench or Common Pleas or Barons of the Exchequer. There were also others who, not being of the bench of one of the three chief courts, were regularly commissioned to take assizes and similar business in the various counties of the Kingdom. In a commission of General Eyre the presiding Judge, at least, was always a Justice of one of the three principal courts. Hervey of Staunton presided over the Eyre of Kent of 6 and 7 Edward II. At that time he was a Justice of the Court of Common Pleas. Of the other Justices sitting with him Henry Spigurnel, William of Goldington and John of Mutford were of the Justices who were commissioned to take country work, and were not of the bench of any of the three principal courts. Of the status of John of Ormsby we cannot be quite sure.



He was certainly a Justice of the King's Bench in the reign of Edward I, but there is no proof of his reappointment upon the accession of Edward II.<sup>1</sup> The *Liberate* Rolls are the only source of information as to the salaries of the Justices with which I am acquainted. These are rolls, for the most part unedited and unpublished, in which are enrolled the King's warrants to his Treasurer to pay out certain sums of money. From these rolls we gather that at the time of the Eyre of Kent the yearly salary of a puisne judge of the King's Bench, Common Bench or Exchequer was forty marks, *i.e.* £26 13s. 4d. The salary of a Chief Justice or Chief Baron was sixty marks, or £40. The salary of a Justice assigned to take assizes and juries in the country was usually £20, though payment is ordered to be made to Geoffrey of Hartlepool, who was then serving as a Justice assigned to take assizes, of twenty marks only for the eighth year of Edward II. This salary is called in the Latin of the *Liberate* Rolls the Justices' *annuum feodum*. It became due in two half-yearly instalments in the Michaelmas and Easter terms of each year. Each order for payment states not only the sum of money which is to be paid but the particular period of service for which it is due and the amount of the whole yearly salary of which it forms part; or, as much more frequently happened, the whole amount of the arrears of a stated yearly salary of which the payment ordered was a payment on account. The Treasurer is ordered, for instance, to pay to Henry le Scrop 'uni Iusticiorum nostrorum de Banco uiginti marcas de termino Sancti Michaelis proximo preterito de annuo feodo suo quadriginta marcarum quod ei concessimus percipiendum in officio supradicto.' This particular order is dated October 30, *anno* 7; and, it may be noted, is a somewhat exceptional instance of a Judge's salary being only about twelve months in arrear. It was no uncommon occurrence for a Judge to have to wait two, three or four years for the payment of his salary. There is an order dated July 18, 8 Edward II, directing the payment to Roger le Brabazon 'capitali Iusticiario nostro ad placita coram nobis tenenda assignato' of a hundred and twenty marks 'de terminis Sancti Michaelis et Pasche de annis regni nostri sexto et septimo que ei aretro sunt de annuo feodo sexaginta marcarum quod ei concessimus percipiendum in officio supradicto.' Dated January 25 of the same year is another order for the payment to William of Bereford 'capitali Iusticiario nostro de Banco' of two hundred and ten marks, being a hundred and eighty marks for the Michaelmas and Easter terms of the fifth, sixth and seventh years of the King, and thirty marks for the Michaelmas term last past. I will give just one other, and more flagrant instance, touching Hervey of Staunton, the presiding Justice of our

<sup>1</sup> See Foss's *Judges of England*.

Eyre of Kent. By an order dated June 30 of the eighth year of the King the Treasurer is directed to pay him a hundred and sixty marks, made up as follows: twenty marks for the Easter term of the second year, twenty marks for each Michaelmas and Easter term of the third, fourth and fifth years, and twenty marks for the Michaelmas term of the sixth year. Two and a-half years' arrears are still left unpaid. A Judge of Edward II's time clearly could not live upon his salary unless he could obtain practically unlimited credit; and it seems very possible that the judicial scandals of the previous reign may have been more directly attributable to the dire financial straits to which the Judges must have been reduced through the King's neglect or inability to pay their salaries with decent punctuality than to mere corrupt greed of money. When Hervey of Staunton, towards the end of June 1313, went down to Canterbury to preside over the General Eyre his salary was more than four years in arrear. But this is not the full tale. Hervey had been a Justice assigned to take assizes in the years 31-34 of Edward I at the usual salary of twenty marks a year. Whether he had previously received anything on account or whether the whole sum to which he was entitled remained unpaid until June 22, 8 Edward II, cannot be certainly determined from the warrant to the Treasurer which I am going to quote, but I should suppose that the probabilities are strongly in favour of the latter hypothesis. 'Mandamus vobis quod dilecto et fideli nostro Heruico de Staunton id quod ei aretro est de illis uiginti marcis quas dominus Edwardus quondam Rex Anglie pater noster per breue suum de liberata eidem Heruico mandauit liberari de Thesauro nostro pro annuo feodo ipsius Heruico de tempore quo fuit unus Iusticiorum dicti patris nostri ad assisas iuratas et certificaciones in diuersis comitatibus regni sui capiendum assignatorum uidelicet de annis regni eiusdem patris nostri tricesimo primo tricesimo secundo tricesimo tercio et tricesimo quarto de Thesauro nostro liberetis iuxta tenorem dicti breuis ipsius patris nostri penes vos ut dicitur residentis.' From which we note that it was one thing for a Judge to get an order upon the Treasurer for his salary, and another thing to get that order carried into effect. And such examination of the *Liberate* Rolls as I have made does not lead me to suppose that the other Justices of the Eyre of Kent were in much better plight.

Little wonder, then, if Hervey of Staunton, sent down into Kent to preside over a General Eyre, a position which must have made the possession of some ready money almost absolutely necessary, found himself compelled to make some urgent representation to the King as to his own needs and the needs of his fellow Justices. I can give no actual proof that he did so, but there is strong presumptive evidence that he did take



some steps of such a nature. The King can make no payment out of his Treasury, but he takes a somewhat unusual course, a course which he would probably have taken only to satisfy some pressing demand upon him. On November 12, 1313, he orders the Sheriff of Kent 'to pay out of the clearest fines and amercements of the Eyre of Hervey of Staunton, William of Ormesby, Henry Spigurnel, John of Mutford and William of Goldington, Justices in Eyre in that county, 60 marks to Hervey, 50 marks to William [*sc.* of Ormesby] and 40 marks each to the others, for their expenses in the Eyre.'<sup>1</sup>

And with this sop of sixty marks Hervey of Staunton has to get on as best he can until he can extract from the Treasury towards the end of June 1315 some of the long-standing arrears of his salary; if, indeed, Edward II's precept was more fruitful of results than the long previous one of his father would appear to have been. Judges, like other men, consider it necessary to live, while, no more than other men, can they live without money; and if it were made so plain to them that if they were to receive any salary at all they must, as a condition precedent, do what they could to replenish the King's treasury, need we marvel overmuch that we should be told by an old chronicler that the Justices of the Eyre of London of 14 Edward II, of whom Hervey of Staunton, with all his painful experience, was one, were as 'lions ravening for their prey'?<sup>2</sup>

Next of the Clerks and of how they were paid. There were clerks of two degrees, chief clerks and other clerks<sup>3</sup>; but how many of each we are not told. It becomes, therefore, impossible to make even a plausible guess at the remuneration of the individual official, as they would seem to have been paid chiefly by fees. A substantial sum derived from these was divided among them in proportions of which we are told nothing, and there is nothing to warrant us in supposing that they received anything in the nature of a fixed salary in addition to these fees. In the Eyre Roll the amount of damages received in cases where they were recovered is set down together with the amount allotted out of them to

<sup>1</sup> *Calendar of Close Rolls, 1313-18*, p. 24.

<sup>2</sup> *Munimenta Gildhallae Londoniensis* (Rolls Series), vol. ii, pt. i, p. 383. But the whole passage should be quoted. 'Memorandum quod transactis Passionis ac Paschae festis redierunt Justiciarii apud Turrim Londoniarum die Lunae proximo post quindenam Paschae anno predicti Regis xiiij<sup>o</sup> et perplacitaverunt Placita Coronae et omnia Placita tam de Quo Warranto quam de Billis non crudeliter ut prius qui cum quasi leones parati ad praedam ante Pascham extitissent nunc versa vice quasi agni vicissim

facti sunt eo quod Humfridus de Boun Comes Herefordiae et Essexiae et complices sui jam in partibus Walliae inopinanter insurrexerant et multas praedas et flagitia hominibus ibidem facientes timorem per totam Angliam nostris temporibus inauditum contulerunt.'

<sup>3</sup> This fact we know from the report of a case on p. 139 of vol. I, where we are told that upon 'firm peace' being granted to one who has received the King's pardon 'every clerk shall have a pair of gloves and the chief clerks two shillings.'

the clerks. The usual formula of enrolment is after this fashion. 'Dampna l.s. unde xx.s. Clericis'; but this formula often gets abbreviated into 'Dampna l.s. xx.s. C.' One gets also, not infrequently, two other forms of enrolment of the damages: (1) 'Dampna l.s. T.C.'; (2) 'Dampna l.s. M.C.' The interpretation of the first of these forms of enrolment is, I suppose, that the whole (totum) of the damages went to the clerks; of the second that a moiety (medietas) was paid to them. Sometimes, and again not infrequently, the damages only are given, and nothing is enrolled as to the clerks' share. There seems to be no evidence which enables us to say whether such omission is due merely to carelessness or, possibly, to the fact that the amount assignable to the clerks was not ascertained when the enrolment was made, or whether it means that the clerks got nothing in these cases.

I have been through the Roll of Juries and Assizes of this Eyre and noted the damages given in every case where they were recovered, together with the amount allotted to the clerks. Damages are recorded as having been given in 180 cases. Sometimes they are assessed in pounds, shillings and pence; sometimes in marks and fractions of marks; and sometimes in marks, shillings and pence. Sometimes the damages are given in pounds, shillings and pence, while the amount allotted to the clerks is given in marks, and sometimes *vice versa*. There seems to have been no sort of fixed proportion between the total amount of the damages and the portion allotted to the clerks. But in this connexion we must remember that by cap. i of the Statutes of Gloucester (6 Edward I) it is provided that 'the Demandant may recover against the Tenant the costs of his Writ purchased together with the damages abovesaid. And this Act shall apply in every case where the Party recovers damages'<sup>1</sup>; In some cases where large damages were recovered the clerks may have had less work to do than in others where small damages only were recovered; and this fact may help to explain the absence of any sort of proportion between the whole sum recovered and the amount allotted to the clerks. I give here several examples of damages recovered during the Eyre, together with the respective amounts allotted to the clerks therefrom. I use the usual abbreviations for pounds, shillings and pence, and write *m.* for marks. The amount allotted to the clerks follows, in brackets, the total sum recovered. Where nothing is noted as to the clerks I write (—); and I write T. or M. when these letters occur in the Roll.

£100 (—); £70 (100s.); £50 (40s.); £40 (100s.); £20 (50s.); £10 (40s.); 100s. (M.); 50s. (20s.); 40s. (1 *m.*); 40s. (10s.); 40s. ( $\frac{1}{2}$  *m.*);

<sup>1</sup> It should be said that this provision is absent from some of the ancient manuscript copies of the statute. See *Statutes of the Realm*, I, p. 47.



40s. (T.); 40s. (M.); 40s. (—); 20s. ( $\frac{1}{2}$  m.); 20s. (T.); 20s. (M.); 20s. (40d.); 20s. (—); 10s. (T.); 10s. (—); 40d. (T.); 40d. (—); 20d. (—); 16d. (—); 12d. (—); 148 m. (40s.); 68 $\frac{1}{2}$  m. (40s.); 30 m. 6s. 8d. (40s.); 20 m. (40s.); 20 m. (3 m.); 14 m. (40s.); 10 m. (20s.); 10 m. (1 m.); 2 m. (1 m.); 1 m. (T.); 1 m. (M.); 1 m. (—);  $\frac{1}{2}$  m. (40d.);  $\frac{1}{2}$  m. (—).

The total sum given in damages in the 180 cases is just about £870, reckoning the mark at 13s. 4d. The total sum allotted to the clerks is just about £124, almost exactly a seventh part of the whole of the damages. As money at the time of the Eyre had probably more than ten times the purchasing value it has now, we shall not be exaggerating the value of the clerks' fees if we assess them at the equivalent of £1400 in modern money. The share of the damages that was given to the clerks was known, at any rate in later times, as 'damna clericorum,' or, in the vernacular, 'damages cleer.' What had become their prescriptive right to it was abolished by 17 Charles II, cap. 6. At the time this Act was passed they seem to have established a right to the fixed proportion of one tenth in the Court of Common Pleas and of one twentieth in the King's Bench and the Exchequer of all damages recovered by verdict, agreement or judgment.<sup>1</sup> This practice of the clerks to claim and to receive, before execution of judgment could be had, a part of all damages recovered was one of the 'abuses' against which the writer of the *Mirror of Justices* protested, declaring that it was hurtful to the people. He is not an authority in whom one can put much trust, but if we may believe him it was not the clerks only who diverted part of a successful plaintiff's damages to their own use, but the Justices also levied a tax upon them, as well as other officers of the court.<sup>2</sup> That these latter, at any rate, did so, the thirtieth chapter of the First Statute of Westminster shows certainly. These 'damages cleer' seem to have been looked upon as the clerks' remuneration for enrolling the pleadings and engrossing judicial writs. When the plaintiff lost his case they had, apparently, to enrol the pleadings without receiving any payment therefor; but in any event they were entitled by statute to a penny for each writ which they wrote,<sup>3</sup> payable, presumably, by the party for whom it was written, but possibly recoverable by a successful plaintiff as part of the costs of his writ purchased. There seems to have been no provision for the recovery of costs by a successful defendant.

<sup>1</sup> See Blount's *Law Dictionary* under 'Damages Cleer.'

<sup>2</sup> The 'corelaires' of whom the writer of the *Mirror* speaks were those 'virgam portantes' (bâtonniers) before the Justices. Cf. Godefroi under 'correlier.'

They had ample fees allowed them by c. xlv of the Second Statute of Westminster.

<sup>3</sup> 'Clerks writing writs original and judicial shall take but a penny.' Statute of Westminster, II, cap. xlv.



In addition to the 'damages cleer' the clerks of Justices in their circuits, *sc.* of Justices in Eyre, were entitled by statute<sup>1</sup> to take two shillings of every wapentake, hundred or town that answereth by twelve or by six. These, in the Eyre of Kent of 6 and 7 Edward II numbered seventy-one,<sup>2</sup> yielding to the clerks £7 2s., which we may probably value at about £80 in the currency of to-day. This, added to the sum derived from the 'damages cleer,' brings the amount received by the clerks to about £1480 in modern money. But there we must leave the matter, not knowing among how many this sum was divided.

#### (4) OF SOME MISCELLANEOUS MATTERS.

It was noted in vol. i, p. xc, that it was no uncommon matter for a man to be arraigned in Eyre for some crime of which he had already been acquitted after due trial, and that the production of the roll recording such acquittal procured his immediate discharge. A Note on p. 194 of the present volume shows that many who had been previously tried and acquitted in some seignorial court may have had to stand a second trial in Eyre through the impossibility of proving their previous acquittal; for the practice of these courts was not to record acquittals, though 'if judgment had been given of him that he should be hanged the aforesaid Court would have recorded such judgment.' The 'aforesaid Court' had to take care that the King's way to the confiscation of a felon's chattels was not obstructed, but it was not its particular business to assist a prisoner who was entitled to plead *autrefois acquit*.

The four versions of Note II on p. 205 note the only exception to the jurisdiction of the Eyre over all pleas touching the people of Kent. If a plea has been entered for hearing in the King's Bench it cannot be heard in Eyre. The King's Court alone is not superseded by the Eyre. Though no Year Book of any other Eyre that I have seen has a note to this effect, there is confirmation of it to be found in a speech by SHARESHULL C.J. in the King's Bench, sitting at Kingston in Surrey, in 1354. 'This place is Eyre,' he is reported as saying, 'and above Eyre; for if the Eyre be sitting in a county, and the King's Bench come into that county, the Eyre shall cease.'<sup>3</sup>

Note III (pp. 205-6) calls for some comment, as the second version of

<sup>1</sup> Statute of Westminster, I, cap. xxvii.

<sup>2</sup> See vol. I, p. xxi.

<sup>3</sup> 'En Surrey A Kingston en Bank le Roy devant Sharesnull fut presente escape de larrons neant contristant le Statut qui done qe tels choses ne seront

pas presente tanque en Eire les parties furent mis a respondre car Sharesnull dit qe cest place est Eire et plus haut qe Eire car si Eire fut Assis en un Conte et Bank du Roy viendra en cel Conte leire cessera.' Assizes 27 Edward III, 1.

it cannot be certainly accepted as containing a true statement of the law. In Bracton's time it seems certain that a jury could not be attainted.<sup>1</sup> Only an assize could be so impeached. But by the first Statute of Westminster some alteration in the law was made, though the authorities do not seem agreed as to what that alteration was. The actual words of the Statute (cap. xxxviii) are: 'Purveu est qe de soremes le Rei de son office dorra atentes sur les enquestes en plai de tere ou de fraunchise<sup>2</sup> qe touche fraunk tenement quant il li semblera qe besoigne seit'; or, as translated in the *Statutes of the Realm*, 'It is provided that the King of his office shall from henceforth grant attaint upon inquests in plea of land or of freehold or of anything touching freehold.' The writer of the book called *Fleta*<sup>3</sup> seems to understand this enactment as providing for attaints upon juries where freehold was concerned as well as upon assizes, but only *ex gratia principis*. The author of the *Mirror of Justices*, who wrote after the date of the Statute, says that 'it is an abuse that writs of attaint are not granted in the chancery without difficulty for the attaint of all false jurors, as well in all other actions, personal, real or mixed, as in the petty assizes.'<sup>4</sup> Coke seems to hold that though attaints were generally allowed in personal pleas before the Statute they were only allowed in pleas touching land upon suit being made to the King, 'which turned the party grieved, not only to great delay, but to extreme trouble, attendance, and charges'; and that the effect of this Statute was to make them a matter of course<sup>5</sup>; but in this comment he does not distinguish between assizes and juries, and the section of the Statute has no reference to assizes. Shortly, *Fleta* and the *Mirror* seem to hold that the Statute granted attaint of juries by consent of the King, a consent which must be specially sought and obtained; while Coke would seem to say that what had before required the King's consent was now a matter of course. Now let us turn to the Year Books and see what the contemporary reporters tell us of the actual practice. In the first version of Note III (p. 205) it is said that the Chief Justice of the Eyre may grant an attaint of any assize taken in the Eyre. Nothing is said about juries or inquests. In the second version of the same note the writer says that the Chief Justice may grant an attaint of any assize or jury taken during the Eyre. If these notes stood alone they would not necessarily be inconsistent; but a note in the Year Book of the Eyre of Middlesex of 22 Edward I says: 'Note that the Justices in Eyre can grant Attaints on Assizes which pass before them, but not upon Inquests.'<sup>6</sup> In the Year Book

<sup>1</sup> Bracton, f. 290 b.

<sup>2</sup> One of the MSS. here adds "ou de chose."

<sup>3</sup> pp. 335-6.

<sup>4</sup> Selden Society Series, vol. 7, p. 164.

<sup>5</sup> *Institutes*, II, p. 237.

<sup>6</sup> *Year Book* of 22 Edward I (Rolls Series), p. 330.



of the Hereford Eyre of 20 Edward I, *Spigurnel*, then a Serjeant, says : ' We think, Sir, that no Attaint shall issue on an Inquest without the special order of the King.' Unfortunately in this case we get no direct ruling from the Bench, for the inquest which it was proposed to attaint was an inquest from only one point of view and was an assize from another, and attaint was being sought of both inquest and assize. The attaint was granted by the Court, but by reason of the double nature of the assize or inquest, the case cannot be cited as an authority that an attaint of an inquest can be had without specialty from the King. And so it would seem that the reporters speak with the same uncertain voice as the commentators as to the effect of cap. xxxviii of the first Statute of Westminster.

Some further proof that procedure by bill<sup>1</sup> in lieu of writ was restricted to the Eyre will be found in the following pages. In the second Note on p. 74 it is said that a remedy for certain grievances must be sought by a bill during the session of the Eyre, but by a writ if the Eyre be not sitting. In the third Note on p. 138, STAUNTON J. is reported as saying that the Court could grant attaints of their own authority in Eyre, which attaints, of course, would be granted upon plaint by bill. The fourth Note on the same page might seem to limit a bill of disseisin to an act of disseisin done after the opening of the Eyre if we did not remember that disseisin is a continuing wrong, and that disseisin is being done every day that the disseisin remains without remedy. But, further than this, merely verbal criticism must not be brought to bear upon these reports ; as plainly appears from the footnote on this same page 138, where a reporter tells us that for disseisin done during the Eyre a disseisee may have a writ from the principal Justice, when it is quite certain that what the disseisee got was, not a writ, but the grant of an assize upon his bill of complaint.

Attention may be called here to the use of the word ' regardant ' in two very unusual connexions. Littleton tells us that the phrase ' regardant to a manor ' is never used except in respect of villeins.<sup>2</sup> Coke, however, in commenting upon this statement, says ' yet in old Bookes it was sometimes applied to services ' <sup>3</sup> ; but no instance from any ' old book ' has hitherto been forthcoming in confirmation of Coke. In the report of *Grandison v. Scoland* (p. 120) we have ' Richard se atorna a Otes de Graunzon adonques seignour de Maner de Kemesinge a qel maner les seruices de ceus tenemenz sont regardans.' Further

<sup>1</sup> See vol. II, pp. xxi-xxx.

<sup>2</sup> ' Et est ascauoir qe nul chose est nosme regardant a un manor etc. forsque

villein.' *Tenures*, sect. 184. O.E.D. follows Littleton, though without citing him.

<sup>3</sup> *Inst.* sect. 181.



than this, on p. 191, we find the word used in respect of a franchise. 'Le Maner de Fauersham a qi la franchise avantdite est regardant.'

An unusual word, 'eel,' occurs on p. 153 of our text and may be noted here as it puzzled the early printers and translators of the statutes, and even the editor of the official *Statutes of the Realm*, who were concerned with it as appearing in cap. xxxvij of the first Statute of Westminster: 'le jugement seit tiel qe le pleintif recoversa sa seisine e ses damages ausi bien des chateaus e del meoble avaunt dit com del eel.' The early printers and translators of the Statutes printed and translated it as 'soil.' The editor of the *Statutes of the Realm*, finding that all the MSS. of authority had either 'eel' or some variant of it, left the word in his text and translated it 'Freehold.' The word is really the first syllable, somewhat disguised, of the Latin *aliud*; and it means exactly what *aliud* means; and this meaning makes excellent sense both of the Statute and of our text.<sup>1</sup>

In the *Quo Warranto* of *The King v. The Abbot of Reading* (p. 191) SPIGURNEL J., in dilating upon the advantages accruing to the King from grants of warren, incidentally informs us of an interesting and somewhat surprising fact of which, so far as I know, we have no knowledge from any other document or record: the fact that the value of a hare in Edward II's time was less than half the value of a rabbit. He tells us that the prices allowed by the assize are three-halfpence for a hare and fourpence for a rabbit; or, to speak accurately, for a cony. We must remember that certainly up to the earlier years of the seventeenth century what we now call a rabbit was known as a cony; the term 'rabbit' being confined to the young of the cony. I have made much search, but I can find no assize that assesses the price of hares. The extract given by one of our reporters from the assize of food published at the beginning of the Eyre of Kent<sup>2</sup> does not even include the price of conies. But these are assessed in other assizes of about the same time which I have seen. In an assize published in the city of London in 28 Edward I the price of a cony is assessed at fivepence if sold with the skin; or at fourpence without the skin.<sup>3</sup> In the assize published at the beginning of the Eyre of London of 14 Edward II the 'carcass' of a 'good cony' is assessed at fourpence; that of one not so good at threepence.<sup>4</sup> As affording some standard of comparison the contemporary prices of capons and fowls may usefully be given. In

<sup>1</sup> See Godefroi under 'El.'

<sup>2</sup> See vol. I, p. 51.

<sup>3</sup> 'Un conynge pur v. deners oue le pel ou pur iiij. deners saunz le pel.' *Munimenta Gildhallae Londoniensis*

(Rolls Series 12) II, p. 192.

<sup>4</sup> 'La char de bon conyn pur iiij. deniers lautre pur iij deniers.' *Ibid.* p. 305.

the assize published at the beginning of the Eyre of Kent (1313) a capon is assessed at fourpence, a fowl of the best quality at twopence.<sup>1</sup> In the earlier of the London assizes already quoted a capon of the best quality is assessed at fourpence, a fowl of the best quality at threepence.<sup>2</sup> In the later assize a fine capon is assessed at threepence; one not so good at twopence halfpenny. A fowl of the best quality is to be sold for twopence; one not so good for three-halfpence.<sup>3</sup> There are probably two explanations of the small value of a hare at this time compared with the value of a rabbit—to use our modern term. The first one is that rabbits had probably been quite recently introduced into England and were as yet comparatively scarce, and being apparently well liked as food were consequently costly. On the other hand hares, for some reason or other, were not well liked and seem to have been little used, by the richer classes at any rate, as an article of food. The prejudice against them seems to have survived certainly to Robert Burton's time. In the *Anatomy of Melancholy* he tells us that a hare is 'a black meat, melancholy and hard of digestion; it breeds *Incubus*, often eaten, and causeth fearful dreams . . . and is condemned by a jury of Physitians'; while he says that 'young Rabbits by all men are approved to be good.'<sup>4</sup> Of the disfavour with which hares were viewed as an article of food in mediæval times we have good proof in the absence of them from contemporary bills of fare, in which conies are generally included. For the installation feast of Ralph, Abbot of Canterbury, for example, in 1309, some four years before the date of the Eyre, six hundred conies were bought at a total cost of £15.<sup>5</sup> This gives sixpence as the price of a cony: a very large sum if we bear in mind the value of money in those days. Again in the bills of fare of the feasts with which Henry IV celebrated his coronation and his marriage with Joan of Navarre we have 'conynge' in one course, and 'Rabettys' in another.<sup>6</sup> Again, among 'the goodly provision' made for 'the great feast at the intronization of the reverende father in God George Nevell, Archbishop of York and Chauncelour of Englande in the VI. yere of the raigne of Kyng Edward the fourth,' are included four thousand 'conyes.'<sup>7</sup> And, to give one more example, we learn from the forty-eighth chapter of Dugdale's *Origines Juridiciales*

<sup>1</sup> 'Geli le melior a ijd. : capon iiijd.' *Eyre of Kent*, vol. I, p. 51.

<sup>2</sup> 'Un chapoun pur iiij. deners le meillour: une geline pur iijd. la meillure.' *Munimenta Gildhallæ Londoniensis*, II, p. 192.

<sup>3</sup> 'Le bon chapoun pour iij. deniers, lautre pur ij. deniers obole. La meillure geline pur ij. deniers; lautre pur j.

denier obole.' *Ibid.* p. 305.

<sup>4</sup> *Anatomy of Melancholy*, pt. I, sect. 2, memb. 2, subsec. 1.

<sup>5</sup> Sir Roger Twysden's *Decem Scriptores*, p. 2010 (ed. 1652).

<sup>6</sup> Harl. MSS., 279, ff. 45, 45b.

<sup>7</sup> Hearne's Appendix to Leland's *Collectanea*, II, p. 2.



that 'rabbet suckers' and conies were served at the Serjeants' great feast in 1555. In none of these bills of fare is there any mention of hares. We may fairly conclude that the small value of a hare as compared with that of a rabbit in mediæval times was largely due to the little use made of it as an article of food. Why so little use was made of it is more difficult to understand, though indeed we seem to have proof that hares were not always absent from the table of even the King himself in the fact that two receipts for cooking them are contained in 'The Forme of Cury,' a cookery book 'compiled of the chef maistres cokes of Kyng Richard the Secunde King of England aftir the conquest: the which was accounted the best and ryallest viand of all cristen kynges.'<sup>1</sup>

This third volume completes the publication of the Year Books of the Eyre of Kent of 6 and 7 Edward II. Once again I repeat my thanks to all those who have given me valuable help in one way and another in my task of editing these Year Books. Amongst these I would especially name here Sir Frederick Pollock, Professor Vinogradoff, the late Professor Skeat, and Mr. L. O. Pike. To the Curators of the Bodleian Library also my thanks are due for their kindness in allowing a valuable and important manuscript to remain in the Public Record Office for my use during the last three years.

Professor Skeat has passed beyond the reach of my thanks, but a grateful memory of him prompts me to express here as best I can my sense of the loss which scholarship and students who would acquire something of that branch of scholarship which he had made especially his own have sustained in his death. One of the busiest of scholars, he was also one of the most generous in largess of his time and knowledge to those who sought in serious earnest to learn something from him. To ask from him was always to receive.

<sup>1</sup> The original manuscript of this treatise has unhappily disappeared, though fortunately not before it had been copied by Mr. Brander, and published by the Rev. Samuel Pegge, LL.D., in 1780. As an example of mediæval cookery I extract one of the two ways given of cooking hares—'Hares in talbotes (?). Take hares and hew hem to gobettes and seeth hem with the blode unwaished in broth, and when they both (be) y nouh (enough) cast hem in colde

water. Pyke and waishe hem clene. Cole the broth and drawe it thurgh stynnor (*strainer*). Take other blode and cast in boyling water; seeth it and draw it thurgh a stynnor. Take almanndes unblanched, waishe hem and grynde hem and temper it up with the self (*same*) broth. Cast al in a pot. Take oynonns and parboile hem, smyte hem small and cast hem into this pot. Cast thereinne powdor fort, vynegar and salt.'



There is yet another farewell I must say in these concluding lines ; and though, happily, there is no sadness about it, yet there goes along with it a sense of no small personal loss. To the late enthusiastic Honorary Secretary of the Selden Society, my friend of many years, His Honour Judge Fossett Lock that now is, I must here bid an official farewell, if it be only to provide myself with an opportunity of expressing my thanks to him for the instant and continuous interest he has taken in this work of mine and in its production, and for much general assistance given in many ways.

W. C. BOLLAND.

EYRE OF KENT

VOL. III.

B

## ITER KANCIE.

## MORTDANCESTRE.

ATTE HEYE *v.* SMYTH.<sup>1</sup>

## Note from the Eyre Roll.

The issue for the assize was :—si Iordanus atte Heye pater Willelmi filii Iordani atte Heye de Newentone fuit seisitus in dominico suo ut de feodo de quatuor acris terre et dimidio cum pertinenciis in Hertlepe et Newentone die quo etc. et si etc. quam quidem terram Mabillia que fuit uxor Walteri le Smyth de Newentone tenet.

Mabel's plea was :—quod predicta tenementa fuerunt in seisinâ cuiusdam Iohannis de Hertlepeshelle qui predicta tenementa concessit quibusdam Waltero de Newentone et Alicie filie sue et ipsi Mabilie tunc uxori eiusdem Walteri habenda et tenenda predictis Waltero et Alicie et heredibus ipsius Alicie de corpore suo procreatis et ipsi Mabilie ad totam vitam suam tenenda. Ita quod si predicta Alicia obiret sine herede de corpore suo procreato tunc post mortem predictorum Walteri et Alicie et ipsius Mabilie predicta tenementa reverterentur heredibus dicti Walteri tenenda de capite dominis

I.<sup>2</sup>

Le tenant dit qe un A. dona a li et a un B. et as heirs B. et pria eide del heir B. fu dit qe A. ne aveit unques rien.

Assisa  
Mortis  
Antecessoris.

William le fitz<sup>3</sup> Jordan<sup>4</sup> de Newentone<sup>5</sup> porta une assise de mortdauncestre vers Mabilie qi feust la femme Jon<sup>6</sup> le mareschal<sup>7</sup> et pria qe conu feust par assise si Jordan son piere feust seisi etc. de viij.<sup>8</sup> acres de terre<sup>9</sup> et de rente et si etc.<sup>10</sup>

*Toudeby.* sire Mabilie vous respond qele tient ceus tenementz a terme de sa vye del<sup>11</sup> lees Jon de Hertlipeshull<sup>12</sup> dount le fee et le droit<sup>13</sup> de mesme les tenementz<sup>13</sup> repose en la persone un<sup>14</sup> Jon<sup>15</sup> le fitz Jon<sup>15</sup> le fitz Wautier<sup>16</sup> le mareschal<sup>16</sup> saunz qi etc. et pria eide de lui.

<sup>1</sup> Reported by *a*, *aa*, *β*, *γ*, *γγ*, *δ*, *ε*, *ζ*, *η*, *θ*, *κ*, *κκ* and *λ*. Names of the parties from E.R. <sup>2</sup> Text of (I) from *γ* collated with *ε*, *κ* and *κκ*. <sup>3-5</sup> atte Hethe *κ*. <sup>4-5</sup> atte Hay *ε*. <sup>6</sup> Wauter *κκ*, Walter *κ*. *The Jon of the text is obviously a mistake.* <sup>7-10</sup> de Neuntun dun mies *iiij.* acre de terre et demie *κ*. <sup>8</sup> *iiij.* *ε*; *iiij.* et demy *κκ*. <sup>9-10</sup> etc. *κκ*. <sup>11-14</sup> heritage *κ*. <sup>12</sup> Hurtlepes-hulle *κκ*. <sup>13-15</sup> *ε* and *κκ* omit. <sup>15-16</sup> *ε* and *κκ* omit. <sup>16-16</sup> from *κκ*.



EYRE OF KENT.  
MORTDANCESTOR.

ATTOE *v.* SMITH.

*Note from the Eyre Roll—continued.*

feodi imperpetuum etc. Et dicit quod predicta Alicia obiit sine herede de se etc. Et similiter predictus Walterus obiit etc. Ita quod ipsa Mabilla modo tenet predicta tenementa ad terminum vite sue tantum de hereditate cuiusdam Iohannis filii et heredis predicti Walteri ad quem spectat reversio etc. post mortem eiusdem Mabilie sine quo non potest deducere predicta tenementa in visum. Et petit auxilium de predicto Iohanne etc.

Mabel subsequently fails to appear.

The verdict of the assize was :—quod predictus Iordanus obiit seisis in dominico suo ut de feodo de predictis tenementis et post terminum. Et quod predictus Willelmus est eius heres propinquior.

The judgment was :—quod predictus Willelmus recuperet inde seisinam suam etc. per visum recognitorum etc. et dampna sua que taxantur per eosdem ad quatuor libras. Et Mabilla in misericordia.

William voluntarily forgave Mabel his taxed damages.<sup>1</sup>

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I.

The tenant says that one A. granted to him and to one B. and B.'s heirs, and he prays aid of B.'s heir. The demandant alleges that A. never had aught in the land demanded.

William the son of Jordan of Newington brought an assize of mortdancestor against Mabel that was wife of Walter<sup>2</sup> the farrier, and prayed recognition by assize that Jordan his father was seised etc. of eight acres of land and of a rental ; and that etc.

Assize of  
mort-  
dancestor.

*Toudeby.* Sir, Mabel makes answer to you that she holds these tenements for the term of her life by the lease of John of Hartlip, and that the fee and the right of the same tenements repose in the person of one John the son of John the son of Walter the farrier, without whom etc. ; and he prayed aid of John.

<sup>1</sup> *m.* 4.

<sup>2</sup> The *John* of the text is clearly written in mistake for *Walter*.

<sup>1</sup>*Westcote*.<sup>2</sup> il <sup>3</sup>covent qe vous diez<sup>3</sup> coment <sup>4</sup>le fee et le<sup>4</sup> droit demoert<sup>5</sup> en sa persone.<sup>6</sup>

*Toudeby*. nous vous dioms qe Jon de Hertlipeshulle<sup>7</sup> feust seisi de mesme les tenementz et dona a Wautier le mareschal et a Alice <sup>8</sup>sa fille<sup>8</sup> et a ceste Mabile sa femme<sup>9</sup> et a les heirs Alice de son corps engendrez<sup>10</sup> et si Alice deuiast saunz heir <sup>11</sup>de son corps <sup>12</sup>la engendre <sup>13</sup>peus Wautier morust avoit un fitz<sup>14</sup> etc.<sup>15</sup> qe les tenementz remanisent <sup>16</sup>a les dreis<sup>17</sup> heirs Wautier et vous dioms qe Alice morust saunz heir de son corps engendre peus Wautier morust et avoit <sup>18</sup>un fitz<sup>18</sup> Jon de <sup>19</sup>Jon issist<sup>19</sup> cesti Jon de qi nous prioms eide.<sup>20</sup>

*Stonore* vous ne devez eyde avoir qar nous voloms averrer qe Jon de Hertlipeshull unqes rien navoit en ceus tenementz en demene nen service peus la mort nostre auncestre de qi mort<sup>21</sup> nous portoms ceo bref issi<sup>22</sup> qil pout doun fere etc. prest <sup>23</sup>daverrer par assise.<sup>24</sup>

*Toudeby* cest averment serroit avoider ceo fet a qey nous ne pooms estre partie saunz Jon en qi le fee<sup>25</sup> etc. et prioms eide. etc.

<sup>26</sup>*Westcote et*<sup>27</sup> *Stonore*.<sup>28</sup> si Jon de qi vous priez eide feust tenaunt de ceus tenementz et nous portasoms tiel bref vers lui et il vochast Jon de Hertlipeshull nous serioms bien rescu a cest averrement de oster lui de son vocher<sup>29</sup> a dire qe Jon de Hertlipeshull <sup>30</sup>ne feust unqes seisi<sup>30</sup> peus la seisine<sup>31</sup> mesme<sup>32</sup> launcestre etc. de qi etc. issi qil pout doun fere etc. mes si nous grauntasoms ore cest eide et Jon se joynsist<sup>33</sup> et vouchast Jon de Hertlipeshull <sup>34</sup>nous nel osteroms james del vocher par cest averrement qar entaunt com nous usoms graunte leide par vertu de ceo fet nous grauntrioms tiel estat a Jon de Hertlipeshull<sup>35</sup> qil pout doun fere<sup>36</sup> par qey etc.

*Toudeby* si cest averrement feust receu ceo serroit en cas la desherit-aunce Jon de qi nous prioms eide et sur cele enqueste naveroit jammes Jon ateynte etc. par qey nous prioms eide etc.

*Malm*.<sup>37</sup> *ad idem*. A la comune ley homme peut vocher et prier eide saunz ceo qe homme ne fust receu de oster le del vocher ou del aide par tiel averment mes par estatut ordene est soulement qe tiel averment soit receu en cas de voucher par qey en cas de eide prier nous sumes

<sup>1-6</sup> κ omits.      <sup>2</sup> *Stonore* κκ.      <sup>3-3</sup> vous covient dire €.      <sup>4-4</sup> € omits.      <sup>5</sup> repose €.      <sup>7</sup> H. κκ; Aldrehull κ.      <sup>8-8</sup> from €;      γ has femme.      <sup>9</sup> κ adds a tener a Wauter et a Alice.      <sup>10</sup> κ adds et a Mabile a terme de sa vie.      <sup>11-14</sup> € omits.      <sup>12-18</sup> κκ omits.      <sup>13-15</sup> κ omits.      <sup>16-17</sup> from €; γ has ditz.      <sup>18-18</sup> issue un €.      <sup>19-19</sup> qy est issu €.      <sup>20</sup> κ here adds etc., and then to the end of the case closely follows the report in γγ.      See Version III below.      <sup>21</sup> seisine €.      <sup>22</sup> from €.      <sup>23-24</sup> etc. €.      <sup>25</sup> droit €.      <sup>26-27</sup> € omits.      <sup>28</sup> κκ omits et *Stonore*.      <sup>29</sup> κκ adds et.      <sup>30-30</sup> unqes ne avoit rien €.      <sup>31</sup> mort €, κκ.      <sup>32</sup> nostre κκ.      <sup>33</sup> vensist κκ.      <sup>34-35</sup> issi κκ.      <sup>36-36</sup> € omits.      <sup>37-5</sup> (on p. 3) sire il ne serreit mye merueille si W. poeit estre resceu a tel averrement countre J. quant il fust meme partie mes merueille serreit si M. poeit estre partie qi nad qe frank tenement saunz J. pur quoi etc. et dautre part a la

*Westcote.* You must say how the fee and the right repose in John's person.

*Toudeby.* We tell you that John of Hartlip was seised of these same tenements and granted them to Walter the farrier and to Alice his daughter and to this Mabel his wife and to the heirs of Alice begotten of her body ; and if Alice died without heir of her body begotten the tenements were to remain to the right heirs of Walter.<sup>1</sup> Now we tell you that Alice died without heir of her body begotten ; and then Walter died, leaving a son John. This John left a son John, and of him we pray aid.

*Stonore.* You ought not to have aid, for we will aver that John of Hartlip never had aught in these tenements either in demesne or by service after the death of our ancestor, on whose death we bring this writ, by which he could grant etc. Ready to aver by assize.

*Toudeby.* Such an averment would be in avoidance of this deed, and we cannot be a party to it without John in whom the fee etc. and we pray aid etc.

*Westcote and Stonore.* If John of whom you pray aid were tenant of these tenements and we were to bring a similar writ against him and he were to vouch John of Hartlip we should certainly be received to say by way of averment, for the purpose of ousting him from his voucher, that John of Hartlip was never seised subsequently to the seisin of our ancestor, upon whose etc. so that he could grant etc. ; but if we were to concede this aid, and John should join and vouch John of Hartlip, we should never be able to oust him from the voucher by such an averment ; for inasmuch as we should have allowed the aid in virtue of that deed we should be allowing to John of Hartlip such an estate as would make him competent to grant an estate. Wherefore etc.

*Toudeby.* If this averment were to be received it might result in the disinherison of John, of whom we are praying aid ; and John could never have attaint of such an inquest. Wherefore we pray aid etc.

*Malmerthorpe ad idem.* At common law a man may vouch and pray aid and no one will be received to oust him from voucher or aid by such an averment as this. Now the Statute<sup>2</sup> provides that such an averment shall be received in the case of voucher only. Consequently in the case of

<sup>1</sup> The scribe has muddled his text here, and I translate what obviously he ought to have written.

<sup>2</sup> Statute of Westminster I. cap. xl.



uncore a la comune ley com avaunt dount nentendoms mie qe par tiel averrement peusez de cest eide oster.

*Pass.* Ca ou homme tient tenementz a terme de vye par lees il <sup>1</sup>ne serra james receu a prier eide saunz title<sup>1</sup> dount del houre qe par ley il ne serroit mie receu a prier eide saunz title moustrer<sup>2</sup> a nous apent naturelement <sup>3</sup>a veuder<sup>3</sup> ceo title mes meuz ne pooms cel title <sup>4</sup>voider en cesti cas<sup>4</sup> qe a dire qe Jon de Hertlipeshull ne feust mie seisi etc. issi qe il pout doner par qey nous entendoms qe laverrement est receivable. *Item*<sup>5</sup> si nous ne seoms receu a cest averrement a defere lour title si purrout touz les plees de cest eyre estre delayes qar checun homme qi feust emplede pout feyndre un faux fet et joyndre<sup>6</sup> un enfaunt denz age et <sup>7</sup>prier eide de lui dount saunz ceo qe homme ne poit voider tiel fet par tiel averrement ut supra si<sup>7</sup> vendroit lenfaunt <sup>8</sup>prie en eide et averoit<sup>8</sup> son age et ceo serroit duresse par qey etc.

<sup>9</sup>HERVY. Posoms<sup>10</sup> qe Jon de qi vous priez eide venist <sup>11</sup>avant jugement rendu<sup>11</sup> par la defaute Mabilie et priast destre receu a defendre son droit il ne serroit mie receu saunz ceo qil ne moustra title<sup>12</sup> coment le droit a lui feust regardaunt mes sil<sup>13</sup> deist qe Jon de Hertlipeshull dona etc. ut supra homme serroit bien receu daverrer qe Jon ne fust unqes seisi <sup>14</sup>peus etc. ut supra<sup>14</sup> qil pout doun fere aussi par de ceo.

*Malm.* Sire<sup>15</sup> si Jon priast estre receu par tiel title com avaunt est dit la serroit homme bien receu a tiel averrement etc. ut supra pur ceo qe la serreit il mesmes partie al averrement <sup>16</sup>en qi desheritaunce laverrement cherreit<sup>16</sup> mes en cesti cas nest il pas par qey etc.<sup>17</sup>

Sur ceo furent les parties adiornez taunt qe <sup>18</sup>lendemeyn et lendemeyn<sup>18</sup> fust Mabilie demande et<sup>19</sup> fist defaute par qey pur ceo qe le avoit apparu avaunt feust lassise par sa defaute agarde etc. et dit feust par touz les justices qe <sup>20</sup>sil usount attendu le jugement sur leyde prier qil ne eust james ew le eide encountre laverrement etc. et est istud valde notabile.<sup>20</sup>

comune ley si pust home voucher et prier eide et serreient receuables nient contre esteant cel averement et par statut le voucher est defait par tel auerement et nient leide pur quoi leide est a la comune ley com auant pur quoi etc.

*Passelleu.* home ne serreit mye en tel cas resceu a prier eide si homme ne meist auant fait qe temoinast soun dit et issi est lespecialte cause de la receite pur quoi si homme pust voider lespecialte hom defait la receite mes meuz ne pust estre voide qe a dire qe celui dust auer fait lespecialte vnqes rien nauoit etc. et issint defere leide pur quoi lauerement est receuable estre ceo κκ.

<sup>1</sup>navera james eide si il ne mustre coment le dreit est en la persone cely qi est prie en eide €. <sup>2</sup>€ adds ut supra. <sup>3-3</sup>avoider €. <sup>4-4</sup>qz vous aliger voider €. <sup>5</sup>Estre ceo €. <sup>6</sup>prier eide de €. <sup>7-7</sup>€ omits. <sup>8-8</sup>e priera €. <sup>9-17</sup>κκ omits. <sup>10</sup>ad idem. Jeo pos €. <sup>11-11</sup>en cas €. <sup>12</sup>especialte €. <sup>13</sup>€ adds veniste et. <sup>14-14</sup>issi €. <sup>15</sup>from €. <sup>16-16</sup>€ omits. <sup>18-18</sup>a un altre jour a quel jour €. <sup>19</sup>€ adds ele. <sup>20-20</sup>si les partyes eussent venuz qe ele eust eu leide countre laverrement €.

a prayer for aid we are under the common law as before ; and therefore we do not understand how you can oust us from this aid by any such averment.

*Passeley.* A life-tenant by lease will never be received to pray aid without 'proving the interest of him of whom he prays aid.'<sup>2</sup> Since, then, the law does not allow him to be received to pray aid unless he prove that interest, it is, naturally, to our advantage to show that no such interest exists ; and we cannot do that better in the present case than by saying that John of Hartlip was never so seised etc. as to be capable of granting ; and therefore we contend that this averment is receivable. Again, if we be not received to this averment in avoidance of their title every plea in this Eyre may be delayed ; for any one that is impleaded may forge a false deed and join with him an infant under age and pray aid of him without the other side being able to avoid such a deed by such an averment as we have offered ; for if the infant came and prayed his age he would have it. And that would be a hardship ; wherefore etc.

STAUNTON J. Suppose that John, of whom you are praying aid, came before judgment given, and prayed, by reason of Mabel's default, to be received to defend his right. He would not be received unless he produced a deed proving his interest. And if he should say that John of Hartlip granted etc. *as above*, the other side would certainly be received to aver that John was never so seised subsequently etc. *as above* as to be capable of granting. So here.

*Malmerthorpe.* Sir, if John were to pray to be received upon the strength of such an interest as has been previously alleged, the other side would certainly be received to make such averment etc. *as above* ; because in such a case he to whose disinheritance the averment would tend would himself be party to it ; but in the present case he is not. Wherefore etc.

And thereupon the parties were adjourned until the morrow ; and upon the morrow Mabel was called and did not answer ; and therefore, seeing that she had appeared previously, the assize was awarded through her default etc. ; and it was said by all the Justices that if they had abided judgment upon the prayer for aid they would never have got their aid in face of the averment etc. And this is to be carefully noted.

<sup>1-2</sup> For the sake of clearness I am translating here rather the alternative version of *ε* given in the footnote on the opposite page than the actual text.



II.<sup>1</sup>

Mortdancestour ou les tenemenz furent donez a W.<sup>2</sup> et a M. sa femme et a A.<sup>3</sup> sa file<sup>4</sup> et a les heirs A. engendrez et si A. devias sanz heir de son corps qe les tenemenz remeindrent a les dreits heirs W. Apres la mort W. et A. M. fust enplede et pria eide del heir W. et pur ceo qe A. devia etc. eide ne fust mie grauntie.

William le fiz Jurdan atte<sup>5</sup> Heye porta le mordancestour <sup>6</sup>vers Mabilie <sup>7</sup>qe fu la femme Wauter le Mareschal et mist en <sup>8</sup>sa plainte<sup>9</sup> xij. acres de terre <sup>10</sup>et demi et viij. s. de rente<sup>11</sup> ove les apurtenances etc.<sup>12</sup>

*Toud.* <sup>13</sup>Mabillie nad rien en cez tenemenz si noun al terme de vie dil heritage Johan fitz et heir Wauter le Mareschal et dit qe un<sup>14</sup> Johan de H.<sup>15</sup> dona le tenementz a un Wauter Mareschal et Alice sa filie <sup>16</sup>et a Mabilie sa femme<sup>17</sup> a aver et a tenir a Wauter et a Alice et a Mabilie<sup>18</sup> et a les heirs du<sup>19</sup> corps Alice engendrez<sup>20</sup> et si Alice devias saunz heir <sup>21</sup>de soun corps engendrez<sup>22</sup> qe les tenemenz remeindrent a les dreitz heirs <sup>23</sup>Water <sup>24</sup>et issi appent <sup>25</sup>la reversion apres la mort Alice al dreiz<sup>26</sup> heirs Wauter et prioms eide de lui<sup>27</sup> e mist avant fest que ceo voleynt.<sup>28</sup>†

<sup>1</sup> Text of (II) from *a* collated with *β*, *δ*, *λ* and *ζ*. Headnote from *β* collated with *aa*. <sup>2</sup> Water *aa*. <sup>3</sup> Alice *aa*. <sup>4</sup> feille *aa*. <sup>5</sup> de la *δ*, *ζ*. <sup>6-12</sup> et pria qe reconu fut par assise si J. son pere etc. morust seisi dun mees et iij. acres de terre oue les appurtenances en N. et G. pus le terme et si meme cesti W. seit plus proscheyn heyr et fut lassise vers un Mabilie porte *δ*. <sup>7-12</sup> et demanda viij. mies et iij. acres de terre od les apurtenances en Neuentoun etc. *ζ*. <sup>8-9</sup> veue *β*. <sup>10-11</sup> *λ* omits. <sup>13-14</sup> *δ*, *ζ* omits. <sup>15</sup> Hardhule *ζ*; Herdepeshulle *λ*. <sup>16-18</sup> *δ* omits. <sup>19</sup> de son *δ*. <sup>17-20</sup> et a les heirs de son cors issaunz *ζ*. <sup>21-22</sup> *ζ* omits. <sup>23-27</sup> *δ* omits. <sup>24-27</sup> *ζ* omits. <sup>25-26</sup> a Wauter la reversion e a les dreits *β*. <sup>27-28</sup> *a* omits.

† From this point *δ* and *ζ* are no longer collatable with *a*. *δ*, collated with *ζ*, reads as follows: et vous dioms qe Wauter est mort et Alice sanz heir de son corps mourust et issint<sup>a</sup> Mabilie <sup>b</sup>en tenant de ces tenementz a terme de <sup>b</sup>sa vie par le fait et la revercion a J. le fitz W. auantdit et prioms eide de ly.

*Stonore.* eyde ne devez aver qar nous dioms qe cely de q<sup>c</sup> vous prenez vostre title <sup>a</sup>qi dust cest fait auer fet<sup>d</sup> unqes ne fut seisi del demene<sup>e</sup> pus la mort cely de qi mort nous portoms ceste assise.

*Toud.* si ele ne fut receu de prier eyde serreit lenfant desherite sanz ceo qil estoit partie a lassise.

*Wesc.* si nous<sup>f</sup> grantassoms ore eyde <sup>a</sup>a ceste fetz<sup>d</sup> par ceste fait si serroms delaie lage al age lenfant pur ceo qil est deinz age et quant il vendreit a son age si auereit il son voucher et si serroms<sup>g</sup> resceu a contrepleder le voucher solom ceo qe done nous est par estatut a dire qe celui <sup>h</sup>qil vouche ne<sup>h</sup> son auncestre <sup>i</sup>unqes nauoint rienz en demene pus la mort celly etc.<sup>i</sup> pur ceo qe par le grant del eyde serroit le fait afferme.<sup>k</sup>

*Mal.* al auncien ley si pout homme prier en eyde et voucher<sup>l</sup> cely qe ly ne ses auncestres unqes furrent seisz del demene<sup>m</sup> mes ore est ceo redresce<sup>n</sup> par estatut en cas de voucher soulement pur quey homme ne deit my remener prier eyde et issint demour il a la comune ley.

<sup>a-a</sup> par quai *ζ*. <sup>b-b</sup> from *ζ*; tenant *δ*. <sup>c</sup> *ζ* adds seisi. <sup>d-d</sup> *ζ* omits. <sup>e</sup> demande *ζ*. <sup>f</sup> *ζ* adds ne. <sup>g</sup> ne serroms point *ζ*. <sup>h-h</sup> ou *ζ*. <sup>i-i</sup> etc. solum le statut *ζ*. <sup>k</sup> *ζ* adds bon. <sup>l-l</sup> ou voucher a garantir *ζ*. <sup>m</sup> *ζ* adds pus la seisine etc. <sup>n</sup> restreint *ζ*.



## II.

Mortdancestor where the tenements were granted to W. and to M. his wife and to A. his daughter and to the heirs born of A., with remainder to the right heirs of W. in the failure of issue of A. After the death of W. and A. action was brought against M., who prayed aid of W.'s heir, but because A. died etc. aid was not allowed.

William the son of Jordan at Hoo brought the mortdancestor against Mabel that was wife of Walter the farrier and laid in his plaint twelve and a half acres of land and a rental of eight shillings together with the appurtenances etc.

*Toudeby.* Mabel has naught but a life interest in these tenements which are the heritage of John the son and heir of Walter the farrier. And he went on to say that one John of H. gave the tenements to one Walter the farrier and to Alice his daughter and to Mabel his wife to have and to hold to Walter and Alice and Mabel and the heirs born of the body of Alice; with remainder, if Alice should die without heir born of her body, to the right heirs of Walter; and that, consequently, the reversion, after Alice's death, accrues to Walter's right heir; and we pray aid of him—and he tendered a deed in proof of what he said.

*Denom.* Sire nous vous dioms qe J. de H. ne fut unges seisi issi qil pout doun fere.

*Westetone.* eyde ne deuez aver qe nous volums averer qe Johan de H. ne fust unkes seisi puis la mort nostre ancestour de ky mort nous portoun ceste assise issi qil pout doun fere prest etc.

*Toud.* ceste averement serreit a voyder ce fest et a ceo ne poem estre partie saunz celi en ky person nous avoms mustre le fee e le dreit demorer e prioum eyde de lui.

*Malm.* ceo respounse ne serreit mie de ouster nous de eide soulement mes anentir nostre tittle en disheritance daltri a qei nous ne pooms mye estre partie etc.

*Pass.* issi peut homme fourcher faux chartres denfaunz deinz age et targer <sup>1-2</sup> touz les plez de cest eyre<sup>2</sup> tauntqe a lour age et ceo serreit graunt meschief.

*Hertepol.* greindre meschief serreit a desheriter lenfaunt par un enqueste a qei il ne serreit paas partie kar<sup>3</sup> quant lenfaunt se joindra en eide si il voille il vochera et de li oster de soun vocher ceo serreit graunt meschef.

*HERVI.* jeo pose qe la femme fust enplede par autre bref et qe ele fist defaute et qe le heyr de qi vous priez eyde priast destre ressu a defendre soun dreit <sup>4</sup>il serreit ressu<sup>5</sup> al dire qe celui de qi doune il cleime navoit unges rien<sup>6</sup> puis <sup>7</sup>la seisine<sup>8</sup> celui de qi mort etc. <sup>9</sup>il serroyt mys a respondre contra laverement<sup>10</sup> auxi par de za.

*Malm.* la ou il prie destre resceu etc. la peut il mesmus estre partie  
<sup>1-2</sup> a touz jours λ. <sup>3</sup> par λ. <sup>4-5</sup> pur tele resoun β. <sup>6</sup> β adds etc.  
<sup>7-8</sup> lassise λ. <sup>9-10</sup> from β; a and λ omit.

*Pass.* sil puisse auer eyde en ceo cas de enfant deinz age par le fait sanz prendre assise si ensuerait qe nul plee ne serreit termine en ceste Eyre qar quant homme entend de perdre sa tenance si feindrait il une chartre qil tenist<sup>a</sup> les tenemenz a terme de sa vie del heritage un enfant <sup>b</sup>gest deinz age et issint<sup>b</sup> priereit eyde<sup>c</sup> et issint serreit chescun plee targe durant ceste Eyre.

*STANT.*<sup>d</sup> respondez a ma demande qar ceo qe vous pledez encontre leyde si est a la voidance du fait pout donques ceste femme qi nad rienz forsqe a terme de vie estre partie de voider bien fet sanz cely en qi le fet et le droit repose.

*Stonore*<sup>e</sup> totes choses qi sunt ditz des parties<sup>f</sup> ne sunt veritez <sup>g</sup>ne creablez si la qe els<sup>g</sup> soient prouez dounc tut mette ele auant un tiel fait <sup>h</sup>ceo nest my chose verrey tanqe ceo seit<sup>h</sup> enquis par assise qar ceste chos chief proprement en conisance dassise.

<sup>i</sup>*Deuon* dit a Sire HERVY Nous voloms de ceo auer auisement de vos compaignons pur ceo qe parties des Justices furrent a la Coroun.<sup>i</sup>

A lendemene furent les partiez demandez fut dit par *Toud* qil furrent accordez. *STANT.* a *Toud.* Vous auez<sup>j</sup> la pire partie.

*Toud.* nanyl ieo say bien qe vous nous vssez <sup>k</sup>agarde leyde<sup>k</sup> etc.

*STANT.* par Saint Pere vous <sup>l</sup>ne ussez<sup>l</sup> pas nostre agard nulle eyde <sup>m</sup>prier et nihil ulterius disputatum erat.<sup>m</sup>

<sup>a</sup> tendreit ζ. <sup>b-b</sup> qi ne serreit mie del age de iij. aunz et ζ. <sup>c</sup> ζ adds de li.  
<sup>d</sup> *Stanore* ζ. <sup>e</sup> *STANTONE* ζ. <sup>f</sup> ζ adds en pedant. <sup>g-g</sup> tanque ζ.  
<sup>b-h</sup> ele ne deit estre crue tanqe il seit prove et pur ceo soit ζ. <sup>i-l</sup> *STANTONE*  
attendez tanque a demaine car nous voloms avisement ζ. <sup>j</sup> aurez ζ.  
<sup>k-k</sup> from ζ. <sup>l-l</sup> ussez eu ζ. <sup>m-m</sup> etc. β.

*Denom.* Sir, we tell you that J. of H. was never so seised as to be competent to grant.

*Westcote.* You ought not to have aid, for we are ready to aver that John of H. was never seised subsequently to the death of our ancestor, upon whose death we bring this assize, so as to be competent to grant. Ready etc.

*Toudeby.* Such an averment would be in avoidance of this deed, and we cannot be party to it without him in whose person we have shown that the fee and right remain ; and we pray aid of him.

*Malmerthorpe.* That answer goes not only to ousting us from our aid, but, by the disinherison of others, to the annulling of our title ; wherefore we cannot be party to it etc.

*Passeley.* Such reasoning would let a man forge false charters [purporting to be made] by infants under age and so delay all the pleas of this Eyre until their age, which would cause much hardship.

*Hartlepool.* It would be a greater hardship to disinherit the infant through an inquest to which he could not be party ; for when he joins himself in aid he may want to vouch, and it would be a great hardship to oust him from his voucher.

STAUNTON J. Suppose that action were brought against the woman by another writ and that she should fail to appear, and that the heir of whom you are praying aid should seek to be received to defend his right. The demandant would be received to say that he by whose grant [the infant] claimed never had aught subsequently to the seisin of him upon whose death etc. [The infant] would be put to answer the averment. So here.

*Malmerthorpe.* In the case supposed, where the infant prays to be



a trier soun tittle et soun dreit mes en ceo caas nemie et issi put il estre disherite en sa absens.

HERVI. rien ne chet en debat si noun meschef allegge <sup>1</sup>dune part et dautre.<sup>2</sup>

*Toud.* <sup>3</sup>meindre est le meschef allegge de proscés<sup>4</sup> de lei qe <sup>5</sup>de desheritesoun.<sup>6</sup>

*Wescote.* par meisme la lei qe vous targerez<sup>7</sup> nostre plee par<sup>8</sup> cest prier eide il serra ensauple qil vochera<sup>9</sup> soun feffour nient coudre esteant nostre excepcioun.

*Toud.* lexcepcioun encoudre le vocher si est ordeine par estatut <sup>10</sup>et noun pas encoudre le eyde prier et pur ceo pleidez a ceo qe comune ley nous doune et<sup>11</sup> qe<sup>12</sup> vous estes en caas de statut eide vous par estatut.

Et postea parstenens fecit defectum<sup>13</sup> ideo capiatur assisa <sup>14</sup>pro ejus defectu.<sup>15</sup>

Mes <sup>16</sup>Sire HERVI dit<sup>17</sup> qil navereit jammes leide encoudre tiel averement.<sup>18</sup>

Et *Toud.* dit qe si par la lei de terre fet qe chiet en conisaunce dassise deit estre provee par assise kar chescun fet nest paas provee quant il est<sup>19</sup> mis avaunt dount si nous grauntassoms ore cesti eyde par un fet nient prove W. serreit de soun dreit au taunt delaie etc. kar lenfaunt peut estre deinz age et quant il vendra en court il priera soun age.

*Pass.* ad idem si nous grauntissoms ore cest eide et Johan <sup>20</sup>se joinsist<sup>20</sup> il vohereit Johan de H. et nous nel ostroms poynt de cel vocher par ceste averement kar en taunt com nous lui eussoms graunte le eide nous<sup>21</sup> eussoms<sup>22</sup> graunte tiel estat a Johan de H. par vertu de cel fet par qei etc.

*Toud.* si cest averement fut resceu ceo serreit pur caas a desheritaunce Johan de qy nous prioms eide et jammes de sur tele enqueste latteinte naverioms.<sup>23</sup>

*Pass.* la ou homme tient tenementz<sup>24</sup> a terme de vie du lees il navera iammes eide sil ne moustre<sup>25</sup> coment le dreit est en la persone celui de qi il prie eide dount dil<sup>26</sup> heure qil ne serreit mie receu a prier aide de saunz moustre tittle a nous appent naturellement a voider tiel tittle mes mieuz ne pouns voider qe a dire qe Johan de H. ne feut<sup>27</sup> unqes seisi issi qil pout doun fere <sup>28</sup>par qei<sup>29</sup> etc.

*Malm.* a la comune lei peut homme voucher et prier eide saunz ceo qe homme soit ouste de voucher ou de prier eide mes cest averement

<sup>1-2</sup> λ omits. <sup>3-4</sup> mendre mechef est proces λ. <sup>5-9</sup> nest disherison β.  
<sup>7</sup> targez β. <sup>8</sup> qe λ. <sup>9</sup> vohereit β. <sup>10-11</sup> supplied from λ. <sup>12</sup> e quant β.  
<sup>13</sup> defaultum β. <sup>14-15</sup> per ejus defaultum β. <sup>16-17</sup> dit fut λ. <sup>18</sup> λ adds et  
*Tuodeby contrarium.* λ ends here. <sup>19</sup> supplied from β. <sup>20-20</sup> veindesit β.  
<sup>21</sup> β adds luy. <sup>22</sup> ussom β. <sup>23</sup> aveneroums β. <sup>24</sup> β omits. <sup>25</sup> mustre β.  
<sup>26</sup> de β. <sup>27</sup> fust β. <sup>28-29</sup> β omits.

received etc., he could himself be party to the trial of his title and right; but in the present case he could not, and so might be disinherited in his absence.

STAUNTON J. All your arguments on both sides simply go to the relative amounts of hardship that may ensue.

*Toudeby.* The hardship attributed to action of law is a less one than disinherison.

*Westcote.* That same law by which you are trying to delay our action through your prayer for aid will entitle the infant to vouch his feoffor notwithstanding our exception.

*Toudeby.* The statute<sup>1</sup> grants an exception against the voucher and not against the prayer for aid; plead, therefore, to what the common law gives us, and rely upon the statute when you come within the statute.

And afterwards the life-tenant made default, and therefore the assize is to be taken by reason of her default.

But SIR HERVEY STAUNTON said that Mabel would never get aid in the face of such an averment.

And *Toudeby* said that a deed that comes within the cognisance of the assize ought, by the law of the land,<sup>2</sup> to be proved before the assize, for a deed is not proved merely by being tendered. If, then, we should now grant this aid on the strength of an unproven deed W. would thereby be delayed of his right etc., for the lad may be under age and when he comes into court he will pray his age.

*Passeley ad idem.* If we were to grant this aid now, and John were to join himself, he would vouch John of H., and we should not be able to oust him from that voucher by this averment, for inasmuch as we granted him the aid we should thereby be admitting that John of H. had the estate alleged in this deed. Therefore etc.

*Toudeby.* If this averment be received it may result in the disinherison of John of whom we are praying aid, and we could never get attain of such an inquest.

*Passeley.* Where a man holds tenements by lease for a life-term he will never get aid unless he show how he of whom he prays aid is entitled. Since, then, he will not be received to pray aid without proving title, it is, naturally, for us to disprove that title, and we cannot more effectually disprove it than by saying that John of H. was never so seised that he could grant etc. Wherefore etc.

*Malmerthorpe.* At the common law a man may vouch and pray aid without being ousted from his voucher or prayer for aid. Now

<sup>1</sup> Statute of Westminster I. cap. xl.

Sc. the common law.

est ordeine en caas de vocher par statut par quei en dreit de eyde prier si sumes a la comune lei etc.

<sup>1</sup>Nota ex isto placito qe si un homme ou<sup>2</sup> une<sup>3</sup> femme seit emplede<sup>4</sup> et prie en<sup>5</sup> eyde de un autre pur ceoqe les tenemenz descenderent a lui par le doun qe un tiel dona a un son pere et a lez heirs<sup>6</sup> etc. et si le demandant dist qe celi qil dist que dut avoir<sup>7</sup> done<sup>8</sup> ne fust unks<sup>9</sup> seisi puis la mort celi de qei mort il demande il navera iamez eide encountre tiel<sup>10</sup> averment per HERVI si avera<sup>11</sup> per *Toudeby*.<sup>12</sup>

### III.<sup>13</sup>

William le fitz Jordan porta son breve de mortdancestre vers Mabile qe fut la femme Water de B. de un mees iiij. acres de tere etc.

*Toudebi* Mabile vous dit qele nad rien en les tenementz forsque a terme de vie del heritage J. le fitz J. fitz W. sauntz qi ele ne put les tenementz mener en jugement e prie eyde de ly et vous dirroms coment qe un J. de A. enfeffa de ceux tenementz Water de M. et Alice sa file et Mabile la femme Water a auer et tener a Water et Alice et a les heirs Alice de son corps engendrez et a Mabile a terme de sa vie et si Alice deuie saunz heirs etc. qe lez tenementz remeygnent al droit heir Water et Alice est mort saunz heir etc. Water e mort issint qe Mabile est tenant a terme de sa vie et le droit de la revercion descendit de Water a J. cum a fitz et heir. de J. a J. cum a fitz etc. saunz qi etc. et prioms ayde de ly<sup>14</sup> ut supra et mist auant un fet qe ceo testmoygna qe voleit qe Johan dona a W. et Alice sa fille et a Mabile la femme Water a terme de sa vie Habendum et tenendum eisdem Waltero et Alicie et heredibus de corpore etc. et prefate Mabilie ad terminum vite sue et si contingat quod dicta Alicia obierit sine herede de corpore suo exeunte predicta tenementa rectis heredibus dicti Walteri remaneant.

STANTONE surueqit Alice Water ou ne mye.

*Toudebi* nanil.

STANTONE home purra pyncer<sup>15</sup> sur le fet si Alice surueqit.<sup>16</sup>

*Stonore* nous vous dioms qele ne deit ayde auer qar nous dioms qe

<sup>1-12</sup> from  $\beta$  collated with aa; a omits.    <sup>2</sup> et aa.    <sup>3</sup> from aa; un  $\beta$ .  
<sup>4</sup> enplede aa.    <sup>5</sup> aa omits.    <sup>6</sup> aa omits.    <sup>7</sup> from aa;  $\beta$  omits.    <sup>8</sup> from  
aa; doner  $\beta$ .    <sup>9</sup> unqes aa.    <sup>10</sup> cel aa.    <sup>11</sup> from aa.  $\beta$  has averount.  
<sup>13</sup> Text of (III) from  $\gamma\gamma$  and  $\kappa$ . The earlier portion of the report in  $\kappa$  is uncollatable with  $\gamma\gamma$  and is collated with the report from  $\gamma$  given in version (I) above.  
<sup>14</sup> From this point  $\kappa$  is almost identical with  $\gamma\gamma$ .    <sup>15</sup> This is probably not a French word but a gallicized form of the O.E. pinch, meaning to find fault with, to pick a hole in. "Ther coude no wight pinche at his writing."—Chaucer, Prol. to *Canterbury Tales*, l. 326.    <sup>16</sup> suruesquite  $\kappa$ .



this averment is given by statute in the case of voucher[only]. Consequently, so far as our right to pray aid is concerned, we still remain at the common law etc.

Note from this case that if a man or woman be sued and pray aid of another upon the ground that the tenements[in demand] descended to him by virtue of a grant which a third party made to his father and his heirs etc.; and if the demandant say that he that is alleged by the tenant to have made the grant was never seised subsequently to the death of him upon whose death he makes his demand, the tenant shall never have aid in face of such an averment according to STAUNTON, J., but may have it according to *Toudeby*.

### III.

William the son of Jordan brought his writ of mortdancestor against Mabel that was wife of Walter of B. for a messuage of four acres of land etc.

*Toudeby*. Mabel tells you that she has naught, save for the term of her life, in the tenements, that are of the heritage of J. the son of J. the son of W., without whom she cannot bring these tenements into judgment, and she prays aid of him; and we shall tell you that one J. of A. enfeoffed Walter of M. and Alice his daughter and Mabel, Walter's wife, of these tenements to have and to hold to Walter and Alice and to the heirs of Alice born of her body and to Mabel for the term of her life, with remainder to the right heir of Walter, in the event of Alice dying without heir etc. Now Alice died without heir etc. Walter also is dead, so that Mabel is tenant for life, and the right to the reversion descended from Walter to J. as his son and heir, and from J. to J. as his son etc., without whom etc., and we pray aid of him *as above*; and he tendered a deed testifying that John had given [tenements] to Walter and Alice his daughter and Mabel, Walter's wife, for the term of her life, to have and to hold to the said Walter and Alice and the heirs of the body etc. and to the aforesaid Mabel for the term of her life, with the provision that if the said Alice should die without heir from her body issuing the aforesaid tenements should remain to the right heirs of the said Walter.

STAUNTON J. Did Alice survive Walter or not?

*Toudeby*. No.

STAUNTON J. Someone might have caught you upon the deed if Alice had been the survivor.

*Stonore*. We tell you that Mabel ought not to have aid, for we tell

le feffour neo fut unques seisi en demeygne neo en service issint qil poiast feffement fere pus la seisine nostre auncestre prest etc.

*Hert* si nous pledassoms ore a ly saunz ayde auer et pays se joynsit entre nous sour lor dit et troue fut qe cesti J. le feffour ne fut point seisi etc. auxi cum il dient issint serreit lenfant tantost desherite saunz estre partie qe serreit inconvenient.

*Stonore.* si nous grantassoms ore cel ayde quant J. etc. vendreit en ayde il vocherreit a garrantir le feffour ou son heir et le vocher esterreit maugre le nostre qar nous nauendroms pas al auerement encountre ly et issi esterreit un vocher encountre forme de statut qest inconvenient. Estre ceo si le heir de qi il prie ayde seit de deynz age il targereit nostre plee quant il vendreit en ayde par soun noun age et issi serreit nostre plee targe par un faus fait si nous ne pouns estre ressus al auerement.

*STAUNTONE* si la femme fait ore defaute et lenfant vensit et priast destre resceu etc. et mustrast auant pur ly ceo qe la femme met ore auant il auendreit bien al auerement countre ly qil tenderent auxi semble par de sa.

*Malb.* ceo nest my semblable quant le heir prie destre resceu qe chiet sur ly mesmes tut et ne mye sur autre qar il mesmes est partie al fait qil met auant et afferme le droit estre taunsoulement en sa persone pur qei il put mesmes pleder son droit demene [et] estre partie al auerement qe vous tendetz et issi ne put pas la femme dautri droit etc. par qei etc.

*Passeleu* vostre ayde prier est assigne<sup>1</sup> sur comune cours de ley et par reson dun fait qe vous mettez avant et vous dioms qe de ley vous ne deuez ayde auer racione qua supra et ley vous grantast ayde ore par tiel cours qe vous demandetz par mesme le cours de ley auera il son vocher quant il vodra qar amedeux cheson sur un fait.

*Toudebi* vous pledez sur vocher deuant ceo qe vous eyez partie qe unqore ne sauoez ceo qil vodra dire quant il vendra le qel vocher ou pleder en chief dautre part meyndre meschief serreit en ceo cas de soffrir un tiel vocher qe soffrer la femme pleder des tenementz qe sunt le droit le heir sauntz ly en sa desheritaunce la ou le heir nauera latteynte.

*Passileu* si ayde vous soit grante encountre lauerement qe nous tendoms iames serra plee termine en ceste eyre qar chescun tenant forgera un

<sup>1</sup> tut fundu κ.

you that the [alleged] feoffor was never so seised either in demesne or by service subsequently to the seisin of our ancestor that he could give feoffment. Ready etc.

*Hartlepool.* If we were now to plead to him without having aid, and if inquest should be joined between us upon their averment, and if it should be found that this J. the feffor was never so seised etc. as they allege, the consequence would be that the infant would immediately lose his inheritance without being party [to the inquest], which would be unjust.

*Stonore.* If we were to grant this aid now, then when J. etc. came in aid he would vouch the feoffor or his heir to warranty, and the voucher would stand in spite of us, for we should not be received to aver against him, and so a voucher that is contrary to the form of the statute would stand, which would be unjust. Further than that, if the heir of whom Mabel prays aid be within age, he could, when he came into court, delay our action by his nonage; and so, if we cannot be received to an averment, our action might be delayed by a fictitious deed.

STAUNTON J. If the wife were now to make default and the infant should come and pray to be received etc. and tender on his own behalf that same deed which the wife now tenders the demandant would certainly be received to the averment which he would offer to make against him; and this seems to be a similar case.

*Malmorthorpe.* The cases are not similar. When the heir prays to be received the matter affects himself alone and no one else; for he himself is party to the deed which he tenders, and he affirms the right to be in his own person only. Therefore he can both plead his own right and be a party to the averment which you tender; but the wife cannot [plead] the right of another etc. Wherefore etc.

*Passeley.* Your prayer for aid is based [only] upon the common law and upon a deed which you have tendered; and we tell you that by statute you are not entitled to aid for the reasons given above; and should the law in its course now grant you the aid which you are praying, the infant will, by the same course of law, have his voucher when he will, for the two things turn upon the same point.

*Toudeby.* You are pleading to a voucher before there is one before the court, for you do not yet know what the infant will say when he comes, whether he will vouch or will plead in chief. And, more than this, less hardship would result from allowing such a voucher than from allowing the wife to plead in respect of tenements which are the right of the heir without him, at the risk of his disinherison, in circumstances in which he could not have attained.

*Passeley.* If aid be granted against the averment which we tender, then no plea in this Eyre will ever be determined; for every tenant



faus fait et taillera la reuercion a un enfant et sil eyt ayde de lenfant donques targerà le plee tantque a son age dato qe cest auerement neo soyt resceyuable qe serreit meschif en ley.

*Malm.* nostre ayde prier est done a la comune ley et uostre auerement est done par statut et ceo soulement en cas de vocher pur qei etc.<sup>1</sup>

STAUNTON ad idem <sup>2</sup>il prierent eide ut supra et met auant fet qe tesmoygne qel deit auer <sup>3</sup>et vous dites qele ne deit ayde auer pur ceo qe celuy qe dut auer done fut vnques seisi etc. et en taunt voles voyder le fet mostrez moy coment vous poetz pleder a la voydance de celuy saunz cely qest partie et saunz cely a qi le fait doun estat quasi diceret ieo neo sai vrayment coment.

*Pass.* allega les duresses ut supra.

*Toudebi* vous demandetz fee et demene et nous ne sumus mye tenaunz etc. jugement etc.

Puis les parties se accorderunt etc. Lassise passa par assent qe dit pur le demandant etc.

Et nota que *Toudebi* apres lassise agarde dit qil aueroit ayde ut prius.

*Stonore* et SPIGURNEL furent in contraria oppinione.

IV.<sup>4</sup>

Robert<sup>5</sup> Le fiz Jordan de Eye porta un assise de Mordancestour vers une Mabile qi fut la feme Water de O. et pria qe reconu fut <sup>6</sup>par assise<sup>7</sup> si Johan son pere<sup>8</sup> etc.

*Toud.* la ou Robert porte cet assise veit<sup>9</sup> cy Mabilie qi responde com tenant<sup>10</sup> et vos dit qe les tenemenz furent en acun tens en la seisine<sup>11</sup> J. de Hertupeshurst<sup>12</sup> le quel J. enfeffa un Water iadis baron <sup>13</sup>cete Mabilie et Alice lor fille<sup>14</sup> auer et tenir a euz treis et a les heirs de cors Alice engendres et si Alice deuiast sanz heir de son cors engendre qe les tenemenz deuiassent<sup>15</sup> a dreits heirs Water et dit qe Water est mort et Alice mort sanz heir etc. de Water est issu un Thomas de quel Thomas Johan a qi le remeindre est taile sanz qi Mabilie ne put respondre et prie eide etc. et mist auant fet qe ceo testmoigna.

*Ston.* eide ne deuert auer qe meme ceti Johan de Hertlupeshutt<sup>16</sup> qe vous supposez qe dust auer done les tenemenz a Water qil ne fut

<sup>1</sup> κ gives this speech immediately after STAUNTON J.'s, instead of before it, as in the text. <sup>2-3</sup> from κ; γγ has qele dit. <sup>4</sup> Text of (IV) from η collated with θ. <sup>5</sup> from θ; η has William here, but Robert subsequently. <sup>6-7</sup> θ omits. <sup>7-8</sup> supplied from θ. <sup>9</sup> vees θ. <sup>10</sup> θ adds des tenementz. <sup>11</sup> assise θ. <sup>12</sup> from θ; H. η. <sup>13-14</sup> mesme ceste Mabilie et Alice la file mesme cest Mabilie θ. <sup>15</sup> deremanst θ. <sup>16</sup> from θ; H. η.

Icy furent  
Justices et  
seriantz in  
contraria  
opinione.

will forge a fictitious deed and lay the reversion in an infant ; and if he be allowed aid of the infant he will then delay the determination of the plea until the infant's age—if this averment be not receivable—which would be hard law.

*Malmerthorpe.* Our prayer for aid is allowed us by the common law, and your averment is given by statute<sup>1</sup> in the case of voucher only ; wherefore etc.

STAUNTON J., *ad idem.* Mabel prays aid and tenders a deed which shows that she ought to have it ; and you say that she ought not to have it because the alleged grantor was never seised ; and, by so saying, you are trying to avoid the deed. Show me how you can plead to the avoidance of that deed in the absence of the infant that is party to it and to whom the deed grants an estate—meaning ‘ *I do not know how you can.*’

Here were justices and serjeants of opposite opinion.

*Passeley* urged the hardship *as above.*

*Toudeby.* You are demanding fee and demesne, and we are not tenants etc. Judgment etc.

Afterwards the parties came to an agreement etc. The assize passed by consent and found for the demandant etc.

And note that after the assize was awarded *Toudeby* said that he ought to have aid *as before.*

*Stonore* and SPIGURNEL J. were of the opposite opinion.

#### IV.

Robert the son of Jordan of Hoo brought an assize of mortdancestor against one Mabel that was wife of Walter of O. and prayed that it should be recognised by the assize that John her father etc.

*Toudeby.* Robert brings this assize. See here Mabel who answers as tenant, and tells you that the tenements were at one time in the seisin of J. of Hartlip, the which J. enfeoffed one Walter, that was formerly husband of this same Mabel, and Alice their daughter, to have and to hold to them three and to the heirs of Alice born of her body, with remainder to the right heirs of Walter in case Alice should die without heir born of her body ; and she says that Walter is dead and that Alice is dead without heir etc. Of Walter was one Thomas issue, and of that Thomas John, in whom the remainder is vested, and without whom Mabel cannot answer ; and she prays aid etc. and he tendered a deed in proof.

*Stonore.* You ought not to have aid, for this same John of Hartlip who, you allege, granted the tenements to Walter, was never so seised either in demesne or by service subsequently to the death of our

<sup>1</sup> Statute of Westminster I. cap. xl.

unqes seisi en demene ne en seruice pus la seisine nostre auncestre de qi seisine etc. issi qil poit doun fere prest etc. jugement etc.

*Toud.* Mabil ad resposdu com tenant de franctenance aussi com vostre bref suppose et ad sa tenance a la courte moustre et ad prie eide<sup>1</sup> de celi a qi le remeindre est taile sanz qi ele ne put estre partie a cet auerement trier qest en le dreit jugement etc. estre ceo si cet auerement fut ressu sanz le heir Water ceo cherreit en voidance de fet et issi serreit le fet<sup>2</sup> trie sanz ly et desherite sanz response ou il <sup>3</sup>poit sa tenance auer defendu<sup>4</sup> quod durum etc.

*Stonor.* si nos grantassoms eide pur ceo fet et il venist en corte et vouchast par meme le fet nos ne serrom pas ressu <sup>5</sup>a counter pleader le vouchier par le auerement<sup>6</sup> qe done nos est par statute.

*Malm.* de comune cours de ley tenant par la lei de engleterre priera eide sanz fait<sup>7</sup> et tenant par lees par especialte et depus qe Mabil met auant especialte qe tesmoigne sa tenance a terme de vie et le remeindre a Johan a qel dreit trier ele ne put estre partie sanz Johan il piert qele deit eide auer.

*STAUNT.* si Mabile fait ore default pur qi les tenemenz fussent en point de perdre et Johan de qi etc. veint auant jugement rendu et priast estre ressu auant jugement rendu a defendre son droit par meme especialte et Robert qi ore porte cete assise deit qe celi qe dust auer done ne fut unqes seisi issi qil poit doun fere il luy ostereit par cel auerement de estre ressu etc.

*Hertep.* <sup>8</sup>nest pas meruaile<sup>9</sup> qe la serreit partie a trier son dreit demene tant qil seit ressu pur eide prier.

*Pass.* si cet auerement<sup>10</sup> fut ressu de corte nul play serreit termine durant cet Eyr qe chescun <sup>11</sup>qi fut<sup>12</sup> enplede mettreit un faus fet de sa tenance a terme de vie et la revercioun a enfant de enz age <sup>13</sup>qi vendroit en Cort pur eide prier et prieroit son age<sup>14</sup> et issi <sup>15</sup>remeindreit sa<sup>16</sup> parole sanz ior sanz atendre la fausine <sup>17</sup>quod durum.<sup>18</sup>

*Frisk.* meindre duresse est qe la parole demurge sanz ior etc. tant qe a la age etc. qe lenfant seit disherite sanz estre partie a son dreit trier estre ceo vostre response qe vous donet est done par statut en cas de vocher et nemie en cas qe eide est prie etc.

<sup>1</sup> supplied from  $\theta$ ;  $\eta$  omits.      <sup>2</sup> dreitence (?)  $\theta$ .      <sup>3-4</sup> ne poit la ataint auer  $\theta$ .  
<sup>5-6</sup> from  $\theta$ ;  $\eta$  has encountre le vocher pur auer.      <sup>7</sup> supplied from  $\theta$ .  
<sup>8-9</sup> supplied from  $\theta$ .      <sup>10</sup> eide  $\theta$ .      <sup>11-12</sup> tenant  $\theta$ .      <sup>13-14</sup> from  $\theta$ ;  
 $\eta$  has etc.      <sup>15-16</sup> demorait la  $\theta$ .      <sup>17-18</sup> supplied from  $\theta$ ;  $\eta$  omits.



ancestor, upon whose death etc., as to be able to grant. Ready etc. Judgment etc.

*Toudeby.* Mabel has answered as tenant of freehold, as your writ alleges, and has proved her estate to the court, and has prayed aid of him in whom the remainder is vested, without whom she cannot be party to the trial of this averment which goes to the right. Judgment etc. Further than this, the reception of this averment in the absence of Walter's heir would go to the avoidance of the deed; and the deed would therefore be tried without him, and he would be disinherited without having had an opportunity to answer, though he might have been able to prove his tenancy; and this would be a hardship etc.

*Stonore.* If we were to allow aid on the strength of this deed and the infant were to come into court and vouch by virtue of this same deed should we not be received to counterplead to the voucher by the averment given to us by statute?

*Malmerthorpe.* By the common law a tenant by the law of England may pray aid without showing a deed, but a tenant by lease must produce a deed; and since Mabel has tendered a deed proving her tenancy for the term of her life, with remainder to John, and cannot be a party to the trial of her right without John, we submit that she is entitled to aid.

STAUNTON J. If Mabel were now to make default so that the tenements were in peril of being lost, and John, in whom etc., were to come before judgment given and were to pray to be received to defend his right by this same deed, and Robert, who now brings this assize were to say that the alleged grantor was never so seised as to be able to grant, could he oust him from being received etc. by such an averment?

*Hartlepool.* It would be nothing very wonderful if he could, for in such a case the infant would be trying his own right where he was received in aid.

*Passeley.* If this averment be received by the Court no plea will ever be determined during this Eyre; for everyone who is impleaded will put in a fictitious deed showing that he has a life tenancy with remainder to an infant under age, which infant will come into court upon a prayer for aid and will pray his age, and so the hearing will stand over *sine die* without the forgery being impeached, which would be hard.

*Friskenev.* It would be less hard that the hearing should stand over *sine die* etc. until the age etc. than that the infant should be disinherited without being party to the trial of his right. And, further than this, the reply that you want to put in is allowed by statute in the case of voucher [only] and not in the case where aid is prayed etc.

STAUNTON. prouuetz qe la femme qi nad qe franctenance put estre partie a trier le dreit sanz le heir.

*Ston.* response de partie ne deit<sup>1</sup> estre dit veray tant qil seit proue par cel proue mes le fet qil mettount avant en proue de cet eide prier nest pas proue en voidance de qel fet nos tendoms de auerer qe Johan qi dust auer done ne fut unqes seisi etc. pur qi il semble qe enz ceo qe cet eide seit graunte et besoigne qe la verite seit enquise par assise a qi ele meme put estre partie.

*SPIG.* ad idem si eide fut graunte par le fet qe Mabil met auant <sup>2</sup>et il<sup>3</sup> vouchassent iointment a garrantir naueroit Robert son response a dire qe celi qil vouchunt ne fut unqes seis <sup>4</sup>en demene ne en service<sup>5</sup> qil pust estre auere par pais donqes sereit le fet plein en partie et en partie voide sanz une cause qe sereit encontre ley.

Et pus les Justices diseient entre euz <sup>6</sup>sans iugement<sup>7</sup> qe ele ne auereit eide.

*Toud.* e les autres seriaunz diseient le reuers unde questio est et pus Lendemein<sup>8</sup> Mabil fit default de gre et pur ceo qele aparust auant en corte dit fut par *SPIG.* qele ne sereit ressu par qi lassise fut agarde par sa default.

#### ANON. v. ANON.<sup>9</sup>

Mortdancestour ou la parole demurra sanz jour et ij. furent demandanz par quei la parole vint en eyre et un de demandanz fust non sui par quei il fust somons non obstante aparencia quia loquela remansit sine die.

En une assise de mortdauncestre arrame devant autres<sup>10</sup> justices <sup>11</sup>devant ceux<sup>11</sup> les demandauntz<sup>12</sup> apparurent et plederent et avoient jour outre a qel jour les justices ne vindrent point par qey ils furent saunz jour <sup>13</sup>peus par comune somons avoient jour en eyre et lun apparust et lautre ne vynt point.<sup>14</sup>

*Stonore* pria qe celui qi ne vynt point feust somons de siwir <sup>15</sup>sil vousist quod concessum fuit non obstante apparencia alias facta et hoc quia post apparenciam remanserunt sine die.<sup>16</sup>

<sup>1</sup> poit  $\theta$ .      <sup>2-3</sup> qe venist et  $\theta$ .      <sup>4-5</sup> from  $\theta$ ; etc.  $\eta$ .      <sup>6-7</sup> supplied from  $\theta$ .      <sup>8</sup> supplied from  $\theta$ .      <sup>9</sup> Reported by  $a$ ,  $aa$ ,  $\beta$ ,  $\gamma$ ,  $\epsilon$ ,  $\lambda$ . Text from  $\gamma$  collated with the others. Head note from  $aa$  and  $\beta$ .      <sup>10</sup> The other texts omit. <sup>11-11</sup> The other texts omit.      <sup>12</sup> Pleyntifs  $\epsilon$ .      <sup>13-14</sup> La parole vint en eyre et deus furent demandez. Lun ne vint point par quei etc.  $a$ ,  $aa$ ,  $\beta$ ,  $\lambda$ ; Pus par communesumons il avcient jour en eyre lun ne vint point par quei etc.  $\epsilon$ .      <sup>15-16</sup> Et sic fuit concessum non obstante apparencia (alias facta quia post apparenciam) remansit sine die. [Et si le voche en assise de mortdancestour face defaute il sera resomons par *SPIG.*]  $a$ ,  $aa$ ,  $\beta$ ,  $\gamma$ ,  $\epsilon$ ,  $\lambda$ ;  $\lambda$  omitting the words in round brackets, and  $\epsilon$  those in square ones.

STAUNTON J. Show me that the wife who has nought but a freehold can be party to trying the right without the heir.

*Stonore.* An *ex parte* answer ought not to be taken to be true until it is sufficiently proved ; and the deed which they tender in support of this prayer for aid has not been proved. And in avoidance of this deed we offer to aver that John, the alleged grantor, was never so seised etc. ; wherefore we submit that before this aid be granted it is necessary that the truth be inquired into by an assize to which Mabel herself can be party.

SPIGURNEL J., *ad idem.* If aid were to be granted upon the strength of the deed which Mabel tenders, and she [and the infant] were jointly to vouch [the grantor] to warranty, would not Robert be entitled to say in reply that he whom they vouched was never so seised in demesne nor by service that his seisin could be averred by a jury ? In which case the deed would be good in part and in part bad without any reason ; and this would be contrary to law.

And afterwards the justices agreed among themselves, without giving judgment, that Mabel should not have aid.

*Toudeby* and the other serjeants were of the contrary opinion, and so the question is doubtful. Afterwards, on the morrow, Mabel purposely made default ; and because she had previously appeared in court SPIGURNEL J., said that she could not be received. Wherefore the assize was awarded by reason of her default.

#### ANON. v. ANON.

Mortdancestor where there were two demandants and the hearing had been adjourned *sine die*. The case, consequently, came up for trial in Eyre. One of the demandants failed to appear. He was therefore summoned, notwithstanding his previous appearance, because the hearing had been adjourned *sine die*.

An assize of mortdancestor was set down for trial before other Justices, before whom the demandants appeared and pleaded and had a day over. Upon which day the Justices did not come, and so the parties remained without day. Afterwards they had a day in Eyre by common summons, and one of them appeared and the other did not come.

*Stonore* prayed that the one that did not come should be summoned to prosecute his claim if he desired to do so ; and this was granted notwithstanding appearance elsewhere ; and this because they remained without a day although they had appeared.



ANON. v. ANON.<sup>1</sup>

De dampnis levandis de vocato ad warantizandum et non de tenente.

Mort-  
dancestre.

*Stonor* pria en un mortdancestre la ou le tenant avoit vouche et fust garanti et le demandant recoversa sa demande etc. et ses damages de c.s. qe les damages feussent levez del garaunt et nient del tenant et ceo lui fust graunte<sup>2</sup> et comaunde<sup>3</sup> al bailif qil levast les damages del garaunt et nient del tenant et sic nota qe il serra garaunti aussi bien des damages come de la terre ou autrement ensiwerent<sup>4</sup> qe le tenant paiereit les damages et ensi plus en cas qe la terre ne vaudroit a vendre a touz jours qe serroit duresse etc.

ORFEURE v. ATTEFELD ET MORTIMER.<sup>5</sup>

## Note from the Eyre Roll.

The issue for the assize was:—si Ricardus le spicer auunculus Isabelle uxoris Baldewini le Orfeure de Pulham et quorundam Simonis le cutiller et Iohannis fratris eius et consanguineus cuiusdam Iuliane uxoris Iohannis Pollard fuit seisisus in dominico suo ut de feodo de quarta parte novem acrarum terre cum pertinenciis in Cokeryng et Tanyntone die quo etc. Et si etc. quam quartam partem Iohannes Mortimer et Margeria uxor eius et Iohanna filia Salamonis Attefeld tenent.

John Mortimer and Margery his wife disclaim all interest and tenancy.

Joan's plea was:—quod quedam Cristina mater eius obiit seisisa de predictis tenementis unde assisa ista arramiata est simul cum aliis tenementis post cuius mortem hereditas predictae Cristine descendit ipsi Iohanne et predictae Margerie uxori Iohannis le Mortemer ut filiabus et heredibus etc. Et dicit quod predicta tenementa unde etc. eidem Iohanne assignata fuerunt nomine propartis etc. unde dicit quod ipsa tenet tenementa illa unde etc. in propartem etc. simul cum predicta Margeria sine qua non debet inde respondere etc.

Thereupon John Mortimer and his wife Margery, joint heiress with her sister Joan of their mother's land, are summoned. They do not appear, but the court rules that Baldwin and Isabella his wife are entitled to be

<sup>1</sup> Reported by γ, ε, θ. Text from γ collated with ε. Head note from ε.  
<sup>2</sup> ε adds par les Justices. <sup>3</sup> ε adds fust. <sup>4</sup> il ensueroit ε. <sup>5</sup> Reported by α, β, γ, γγ, δ, ε, κ and λ.

## ANON. v. ANON.

Of damages to be levied upon the vouchee to warranty and not upon the tenant.

In a mortdancestor where the tenant vouched and was warranted and the demandant recovered his demand etc. and damages to the amount of five pounds *Stonore* prayed that the damages should be levied upon the warrantor and not upon the tenant. This was granted, and command was given to the bailiff to levy the damages upon the warrantor and not upon the tenant. And note from this that a tenant is entitled to be warranted of his damages as well as of his land, or otherwise it might come about that the tenant might have to pay more in damages than he could ever sell the land for, which would be a hardship etc.

Mort-  
dancestor.

## GOLDSMITH v. ATTFIELD AND MORTIMER.

## Note from the Eyre Roll—continued

answered in respect of the fourth part of the land in issue, and that Joan must answer them without Margery.

Joan thereupon goes on to plead:—quod assisa ista non debet inde procedere. Dicit enim quod post mortem predicti Ricardi de cuius morte etc. tenementis predictis unde assisa etc. existentibus in seisinâ predictæ Cristine matris ipsius Iohanne cuius una heredum ipsa est quidam Thomas filius et heres eiusdem Ricardi remisit et quietumclamavit ipsi Cristine et heredibus suis totum ius et clamium quod habuit vel habere potuit in predictis tenementis etc. Et profert quoddam scriptum sub nomine predicti Thome quod hoc testatur etc. unde petit iudicium etc.

The replication of Baldwin and Isabella was:—quod predictum scriptum eis preiudicare non debet etc. Dicunt enim quod predictum scriptum non est scriptum predicti Thome et hoc petunt quod inquiratur per patriam. Et Iohanna similiter eo quod testes nominati etc. obierunt.

The Court now orders a jury to be summoned to try the above issue, the disputed deed to remain meanwhile in the custody of the King's Clerk. On the day assigned for the hearing Baldwin and Isabella fail to appear. The Court thereupon gives judgment that Joan go away *sine die*, and that Baldwin and Isabella be in mercy, and directs that the deed be returned to Joan's attorney.

' m. 8 d.

I.<sup>1</sup>

Mordancestour ou le tenaunt dit qe sa mere morust seisi en son demene com de fee etc. apres qi mort entra il et un altre et pria eyde de laltre et habuit nient contresteant qe le demaundant tendi daverrier que sa mere navoyt acun franctenement : secus si fin ust este mis en prove de son dit.

Baudewyne <sup>2</sup>le Orfeure<sup>2</sup> et Isabelle sa femme <sup>3</sup>et ses<sup>4</sup> parceners<sup>5</sup> porterent le<sup>6</sup> mort dancestre vers vers (*sic*) Jon le fitz Salomon ate Felde<sup>7</sup> et Jon<sup>8</sup> Mortimer et Margerie sa femme de certains tenementz de la mort Richard <sup>9</sup>le Spicer<sup>10</sup> uncle la dite Isabelle et cosyn les autres parceners<sup>11</sup> Baudewynne et Isabelle siwirent et<sup>12</sup> les autres<sup>13</sup> parceners nient<sup>14</sup> par qey ils furent sevez<sup>15</sup> par jugement et furent receus de lour purpartie <sup>16</sup>Jon Mortimer et M.<sup>16</sup> sa femme <sup>17</sup>vers qis le bref fust porte en curt<sup>17</sup> vindrent et <sup>18</sup>disent qil navoient rien en les tenementz a ore par qey Jon le fitz Salomon etc. respond com tenant de les tenements et dit qe ceus tenementz et autres furent en la seisine une Cristine aele cesti Jon et miere Isabelle la femme un Richard etc.<sup>19</sup> qi morust seisi de ceus tenementz et de autres en son demene com de fee <sup>20</sup>apres qi mort nous entrames en ceus tenementz et autres com parceners et departimes les tenementz et vous dioms qe ceus tenementz <sup>21</sup>qe ore sount en demande<sup>21</sup> furent assignez <sup>22</sup>a moy en ma<sup>22</sup> purpartie <sup>23</sup>en alowaunce dautres tenementz qe furent assignez a Isabelle en sa purpartie<sup>23</sup> saunz qi<sup>24</sup> jeo ne peus respond et prie eide de Isabelle.<sup>25</sup>

*Toudeby* eide ne devez avoir qar Cristine de qi<sup>26</sup> vous parlez ne avoit unqes rien en les tenementz si noun en dower prest del averrier etc. dount vous ne poez mie dire qe vous estes heir Cristine de ceus tenementz par qey vous ne devez eide aver.

*Heg*<sup>27</sup> A cest averrement ne pooms estre partie saunz <sup>28</sup>Isabelle et prioms eide de lui qi est<sup>28</sup> nostre parcenier.

<sup>1</sup> Text of (I) from  $\gamma$  collated with  $\delta$ ,  $\epsilon$ ,  $\kappa$ . Head note from  $\beta$ . <sup>2-2</sup> L.  $\delta$ .  
<sup>3-5</sup>  $\delta$  omits. <sup>4</sup> iij. autres  $\kappa$ . <sup>6</sup> un assise de  $\epsilon$ . <sup>7</sup> Welde  $\kappa$ . <sup>8</sup> J. de  $\delta$ .  
 $\kappa$  adds de. <sup>9-11</sup> lour pierre  $\kappa$ . <sup>10</sup> Espicer  $\epsilon$ . <sup>11</sup>  $\kappa$  adds al primer  
<sup>11-12</sup>  $\kappa$  omits. <sup>11-14</sup> B. i furent et les autres parceners y furent point  $\delta$ .  
<sup>13</sup> iij  $\kappa$ . <sup>15-18</sup> *Toudebi*. Pur ceo sire nous prioms qe les tenantz  
respondent. *Hing*. J. de Mortimer et M. sa femme vous  $\kappa$ . <sup>16-16</sup> J. de M. et  
Isabelle  $\delta$ . <sup>17-17</sup> from  $\epsilon$ . <sup>18-19</sup>  $\kappa$  omits. <sup>20-25</sup> apres qy mort descendent les  
tenemenz ensemble oue autres a M. et a Jone nostre meere com a ij. filles et un heir  
qi leritage entre eux departirent issint qe ceux tenemenz furent assignes a nostre  
miere en noun de sa pourpartie en allouance dautres tenemenz qe furent assignes a  
lauant dite M. en Cantebirs et issint nous tenoms ceux tenemenz en parcenierie etc.  
et prioms eide de lui  $\kappa$ . <sup>20</sup>  $\delta$  adds et de droit. <sup>21-21</sup> ore demandez  $\epsilon$ .  
<sup>22-22</sup> en la  $\delta$ . <sup>23-23</sup>  $\delta$  omits. <sup>24</sup> ceo qe  $\delta$ . <sup>26</sup>  $\delta$  adds seisine. <sup>27</sup> Ingham  $\epsilon$  ;  
*King*.  $\kappa$ . <sup>28-28</sup>  $\kappa$  omits.



## I.

Mortdancestor where the tenant says that his mother died seised in her own demesne as of fee etc. and that after her death he and another entered ; and he prayed aid of that other and had it, notwithstanding that the demandant offered to aver that the mother had not a freehold. *Secus* if the demandant had proffered a fine in proof of his allegation.

Baldwin Goldsmith and Isabel his wife and her parceners brought the mortdancestor in respect of certain tenements against John the son of Solomon Attfield and John Mortimer and Margery his wife upon the death of Richard Spicer uncle of the said Isabel and cousin of the other parceners. Baldwin and Isabel appeared, but the other parceners did not, and they were therefore severed by judgment [from the action for the whole] and were received [to sue] for their own share. John Mortimer and Margery his wife, against whom the writ was brought, came into court and said that they had naught at present in the tenements ; and therefore John the son of Solomon etc. answers as tenant of the tenements and says that these tenements and others were in the seisin of one Christiana that was grandmother of this same John and mother of Isabel, the wife of Richard etc., who died seised of these tenements and of others in her own demesne as of fee ; after whose death we entered, as parceners, these tenements and others, and we apportioned the tenements, and we tell you that these tenements that are now in demand were assigned to me as my share in the place of other tenements which were assigned to Isabel as hers, without which Isabel I cannot answer, and I pray aid of her.

*Toudeby.* You ought not to have aid, for the Christiana of whom you speak never had aught in the tenements save by way of dower. Ready to aver it etc. Consequently you cannot say that you are Christiana's heir in respect of these tenements ; and therefore you ought not to have aid.

*Hengham.* We cannot be party to this averment without Isabel, and we pray aid of her as our parcener.

<sup>1</sup>SPIGURNEL <sup>2</sup>ad idem<sup>2</sup> de peus qil sount entrez apres la mort lour miere etc. enclamaunt heritage soit ceo a droit ou a tort lun ne peut mie respondre de Cour comune heritage saunz lautre. Item<sup>3</sup> eide en tiel cas <sup>4</sup>cest graunte<sup>4</sup> en avauntage des parceners qar si le <sup>5</sup>eide soit somons<sup>5</sup> le quel qil viegne ou noun rien ne peut descheir<sup>6</sup> al parcener <sup>7</sup>qi prie eide qe ne descherra al parcener<sup>7</sup> qi est prie <sup>8</sup>en eide<sup>8</sup> pur <sup>9</sup>la graunte<sup>10</sup> etc. et<sup>9</sup> lavauntage qe lei lour donne nous ne voloms mie tolr par qey eit leide.<sup>11</sup>

Le eide<sup>12</sup> somons ne vint point par qey fust agarde qil respond soul.

*Hengham* Sire donques dioms nous qe cest un bref de possessioun et veut estre porte de la mort<sup>13</sup> le drein seisi mes apres la mort Richard de qi mort etc. entra un Thomas com fitz et heir et fust <sup>14</sup>plus tardif<sup>14</sup> seisi. Jugement de bref.

*Toudeby* <sup>15</sup>il vous covent dire<sup>16</sup> qe il feust seisi et morust seisi ou qil feust seisi et aliena <sup>17</sup>ou assignea en dower ou sil fust seisi et disseisi uncore covendroit il ceo dire et issint doner nous bon bref de sa seisine ou de son lees.

et <sup>18</sup>ad hoc concordat curia<sup>19</sup> par quei etc.<sup>20</sup>

*Hengham.* <sup>21</sup>Sire nous vous dioms qe<sup>22</sup> Thomas fust seisi etc. et assignea les tenementz <sup>23</sup>a Cristine en dower apres la mort Richard<sup>24</sup> etc.<sup>25</sup> jugement de bref.

*Toudeby* lassise<sup>26</sup> dirra la verite.<sup>27</sup>

*Hengham* <sup>28</sup>ne voleit mie attendre lassise mes dit qe mesme celuy<sup>28</sup> T. fitz et heir Richard<sup>29</sup> de qi mort etc. survesqi Richard et releasa et quite clama tut son droit al avant dit Cristiene miere Isabelle etc. et

<sup>1-11</sup> *Toudeby.* par nostre bref nous supposoms les tenemenz estre le droit nostre plere, et si nous grantassoms leide nous les granteroms estre le droit C. sa femme, et issint le revers de nostre iugement etc.

SPIGURNEL. coment qe M. ust auenu par disseisine ou autrement pus qe les filles entrerent et departirent leritage issint qe ceste tient en parcenerie il nest pas respons qe ceste perde la sue partie et lautre rien pur quoi eit leide a quoi Sire HERUI ne sacorda pas en but et nepurquant habuit etc. κ.

<sup>2-2</sup> € omits. <sup>3</sup> Estre ceo δ, €. <sup>4-4</sup> Estut δ. <sup>5-5</sup> prier en eyde voche δ. <sup>6</sup> escherrer δ. <sup>7-7</sup> from €. <sup>8-8</sup> from €. <sup>9-9</sup> δ omits. <sup>10</sup> quantite €.

<sup>12</sup> prie en eyde δ. <sup>13</sup> seisine δ, €. <sup>14-14</sup> κ omits. <sup>15-16</sup> il covient fere vostre excepcioun pleyne saver €; qe fust cel T. il accouynt qe vous mettet vos tre excepcion plus pleyn saver κ. <sup>15-27</sup> il couent fere vostre excepcioun pleine

saver qe vos diez qil fut seisi ou qil fut seisi et aliena ou assigna en dower par quei lassise dirra la verite, δ. <sup>17-22</sup> et SPIGURNEL admittit ou qil assigna a sa mere

ceux tenemenz en dower. *Hingham.* donque vous dioms qil entra com fiz et heir κ. <sup>18-19</sup> a ceo se assenti la Curt δ, €. <sup>19-20</sup> from €. <sup>21-22</sup> from €. <sup>23-23</sup> en

douer ou il pout aver en bref de sa mort κ. <sup>24</sup> from €. <sup>26</sup> κ adds vous. <sup>28-28</sup> Sire nous vous dioms qe κ. <sup>29</sup> from this point to end κ reads: en la seisine

C. releasa et quiteclama: jugement si vers nous accion pusse aver. *Toudebi.* Vous avet plede al assise vous ne poet resortir de pleder del assise et *Hingham* dit qil ne sauoit nyent avant del reles et *Toudebi* de sa volunte dedit le fait. Ideo jurata loco assise.

SPIGURNEL J., *ad idem*. Seeing that they entered after their mother's death and claim, whether rightly or wrongly, to have inherited, the one cannot answer to the Court for their common heritage without the other. Further than this, in circumstances like these, aid is granted for the advantage of the parceners ; for, whether he that is summoned in aid come or not, the parcener who prays aid can lose naught which the parcener who is prayed in aid will not lose ; and we do not want to deprive her of the grant [of aid] and the advantage which the law gives her. Wherefore Joan had aid.

John was summoned in aid but did not come, and therefore it was ruled that Joan must answer alone.

*Hengham*. Then, Sir, we tell you that this is a possessory writ and purports to be brought upon the death of the latest seised ; but after Richard's death, upon whose death etc., one Thomas entered as son and heir, and was seised more lately. Judgment of the writ.

*Toudeby*. He ought to tell you whether he was seised and died seised, or whether he was seised and alienated, or assigned by way of dower ; or, again, if he was seised and disseised, he ought to say so, and so give us a good writ on his seisin or on his lease.

And with that the Court agreed ; wherefore etc.

*Hengham*. Sir, we tell you that Thomas was seised etc. and assigned the tenements to Christiana by way of dower after the death of Richard etc. Judgment of the writ.

*Toudeby*. The assize will determine the truth.

*Hengham* was not willing to await the assize but said that that same Thomas, the son and heir of Richard, upon whose death etc., survived Richard and released and quitclaimed all his right to the aforesaid Christiana, Isabel's mother, etc. ; and he demanded judgment



demanda jugement sil peuse rien demander et mist avant fet qe ceo tesmoigne a et le fet fust dedit ideo<sup>1</sup> etc.

II.<sup>2</sup>

Baudewin le Orfeverer et Isabel sa femme et Juliane cosine Isabel porterent le<sup>3</sup> mortdancementour vers Johan le fitz Simoun atte Feld de la mort Richard de S.<sup>4</sup> uncle a lavaunddit Isabel et cosin Juliane et disoeint qe de Richard pur ceo qil morust etc. descenderent etc. a Dionise com a soer<sup>5</sup> e heir<sup>5</sup> de Dionise a Isabel e Juliane come a file etc. <sup>6</sup>Et Juliane non sequitur etc.<sup>6</sup>

*Ingh.* Sires nous vous dioms qe un Cristiene la femme R. de S. morust seisi en ceu tenemenz en soun demene <sup>7</sup>come de fee<sup>7</sup> apres qi mort entrerent cesti Johan et <sup>8</sup>Johane la filie Margeririe de Mortone com deus filez<sup>9</sup> et un eyr<sup>10</sup> pur ceo qe les tenemenz sount departables etc. issi qe la purpartie se fit entre eux e ceux tenemenz furent assignez a cesti Johane en noun de sa purpartie qe ne les pout mener en jugement sanz Jon soun parcener et prie eide de lui.

*Pass.* Eide ne deit il aver kar Cristiene avoit unges rien en ceux tenemenz si noun en noun dowere com femme Richard. Prest etc.

*Ingham.* A cest averement nous ne pooms estre partie kar rien ne nous doit depirir par lei saunz nostre parcener qe si nous perdissoms si averoms nostre porcioun de comune dreit de sa purpartie e si nous pledissoms soul si serioms ouste de cele avauntage encountre lei de terre par quei leide devoms avoir.

*Westc.* Si nous grauntassoms eide si abbateriom<sup>11</sup> nostre bref demene qe ceo seroit daffermer soun tittle verrei de la seisine sa mere qe sereit contrere<sup>12</sup> a nostre<sup>13</sup> actioun.

*SPIG.* <sup>14</sup>Nous veioms<sup>15</sup> qe eide est graunte<sup>16</sup> par deus resons la une est qe si le parcener est en court par caas il usereit quiteclame ou autre response dorreit<sup>17</sup> en barre dactioun un autre reson est qe nul parcener ne deit perdre de comune heritage saunz aver alowaunce de soun parcener par quei nous agardoms leide qe fut sommons et ne vint point et ideo respondeat solus etc.

<sup>1</sup> from  $\epsilon$ .    <sup>2</sup> Text of (II) from  $\alpha$  collated with  $\beta$  and  $\lambda$ .    <sup>3</sup> un  $\beta$ .    <sup>4</sup> G.  $\lambda$ .  
<sup>5-5</sup> from  $\beta$ .    <sup>6-6</sup>  $\lambda$  omits.    <sup>7-7</sup>  $\lambda$  omits.    <sup>8-10</sup> Henri le fitz Margerie cum un  
heir  $\lambda$ .    <sup>9</sup> from  $\beta$ ; interlined and then erased in  $\alpha$ .    <sup>11</sup> abatera  $\beta$ .    <sup>12</sup> con-  
trarie  $\beta$ .    <sup>13</sup> sa  $\lambda$ .    <sup>14-15</sup> ne neez vous  $\beta$ .    <sup>16</sup> grantable  $\beta$ .    <sup>17</sup> durreint  $\beta$ .

whether they could demand aught ; and he tendered a deed in proof ; but the deed was denied ; wherefore etc.

## II.

Baldwin Goldsmith and Isabel his wife and Juliana, Isabel's cousin, brought the mortdancestor against John the son of Simon Attfield upon the death of Richard of S. uncle of the aforesaid Isabel and cousin of Juliana ; and they said that because Richard died etc. [the tenements] descended to Dionysia as his sister and heir, and from Dionysia to Isabel and Juliana as her daughters etc. And Juliana does not prosecute her claim etc.

*Ingham.* Sir, we tell you that one Christiana the wife of R. of S. died seised of these tenements in her own demesne as of fee. After her death this same John and Joan, the daughter of Margery of Morton, entered as two children<sup>1</sup> and one heir, for the tenements are partible etc. ; and so apportionment was made between them ; and these tenements were assigned to this John by way of his share ; and he cannot bring them into judgment without Joan his parcener, and he prays aid of her.

*Passeley.* He ought not to have aid of her, for Christiana never had aught in these tenements save by way of dower as Richard's wife. Ready etc.

*Ingham.* We cannot be party to this averment, for we ought to be put in no peril from the law without our parcener ; for if we should lose we should be entitled to receive our portion of the common heritage out of her share, from which advantage we should be ousted, if we were to plead alone, against the law of the land,<sup>2</sup> by which we are entitled to aid.

*Westcote.* If we should grant aid we should abate our own writ, for we should thereby allow that John had a good title by the seisin of his mother ; and that would be contrary to our writ.

SPIGURNEL J. We see that aid is granted for two reasons. The one reason is that if the parcener be in Court he may say that the demandant has quitclaimed, or assign some other matter in bar of his action. The other reason is that no parcener ought to lose his share of the common heritage without receiving compensation from his coparcener. Wherefore we grant aid.—Joan was summoned, but did not come ; and therefore John must answer alone etc.

<sup>1</sup> They must in fact have been two grandchildren, each representing a deceased mother. <sup>2</sup> *Sc.* the common law.

III.<sup>1</sup>Mort-  
dauncestre.

Baudewyn Lorfeur et Isabelle sa femme et deux autres parceners porterent le mortdauncestre de la mort Johan son pierre vers Robert Esselinche qi respondist par T. Bacon et dit qe une Cristiene fut seisi de ceuls tenementz apres qi mort les tenementz descendirent a luy et a un Johan son parcenier et pria ayde de luy.

*Westcote* eyede ne deuetz auer qar nous vous dyoms qe Cristiene nauoyt en les tenementz forsqe dower et ceo qe vous auetz sy est par abatement qe vous feistes apres sa mort et ceo voloms auerer par assise.

*Bacon* vous auez conu qe nous avoms entre par abatement apres la mort Cristiene qi tynt en dower la ou naturellement gist bref de intrusion et demandoms jugement du bref.

*Westcote* nous voloms averer qe nostre auncestre morust seisi et qe Cristiene nauoyt forsqe dower.

*Bacon* a pleder lestat mon auncestre ne poetz estre partie saunz mon parcenier qar comune ley donne ayde en tiel cas.

*Westcote* pur nous ne deuetz auer qar si nous grantassoms eyde en la manere cum il demandent si granteroms qe Cristiene morust seisi en son demene cum de fee et par tant abateroms nous nostre bref et serroms foreclos de lassise.

STAUNTONE la partie ne poet granter ayde en ceo cas mes il couent qe la court le face qar ley voet qe son parcenier venge et donqe plederetz vous a lassise.

COWYN v. IRMONGERE.<sup>2</sup>I.<sup>3</sup>Mort-  
dauncestre.

Jon de B. porta son mortdauncestre vers <sup>4</sup>Richard le Irmongere<sup>4</sup> et Agnes sa femme Isabelle et Jone ses soers et pria <sup>5</sup>qe reconu fut par assise<sup>5</sup> si W. Cowyn<sup>6</sup> son uncle fust seisi de j. mies <sup>7</sup>iiij. acres de terre etc.<sup>7</sup> en B. <sup>8</sup>en son demene com de fee le jour que il morust etc. et si<sup>8</sup> etc.

*Ingham* sire<sup>9</sup> cest un bref de possessioun et veut estre porte de la seisine le dreyn seisi et dioms qe apres la mort <sup>10</sup>W. Cowyn<sup>10</sup> entra une Jone com fille et heir et seisie fust et aliena. Jugement de bref.

<sup>1</sup> Text of (III) from γγ. <sup>2</sup> Reported by γ, δ, ε, ζ (twice), η and θ. Also in the old edition of the Year Books, Hil. 6 Edward II. See Appendix A, p. 211, for the record. <sup>3</sup> Text of (I) from γ collated with δ, ε, ζ (first version). <sup>4-4</sup> R. δ. <sup>5-5</sup> from δ, ε, ζ; etc. γ. <sup>6</sup> T. δ; Colin ζ. <sup>7-7</sup> oue les appurtenances ε. <sup>8-8</sup> ζ omits. <sup>9</sup> δ, ε add la ou il porte ceste assise de la mort son uncle et prie qe reconu seit etc., la vous dioms nous qe; ζ adds la ou Johan porte cesti bref de Mordancestre et prie qe reconu soit par assise le quel etc. nous vous dioms qe. <sup>10-10</sup> William T. δ; Johan ζ.



## III.

Baldwin Goldsmith and Isabel his wife and two other parceners brought the mortdancestor upon the death of John, Isabel's father, against Robert Eastling, who answered by *T. Bacon* and said that one Christiana was seised of these tenements, which, upon her death, descended to him and to one John his parcener, of whom he prayed aid. Mortdancestor.

*Westcote*. You ought not to have aid, for we tell you that Christiana had naught in the tenements save by way of dower, and that what you have of them you got by the abatement into them which you made upon her death; and we will aver that by assize.

*Bacon*. You have alleged that we entered by abatement after the death of Christiana who held in dower. But in that case your writ is properly one of intrusion; and we demand judgment of the writ.

*Westcote*. We will aver that our ancestor died seised, and that Christiana had naught but dower.

*Bacon*. I cannot be a party to pleading the estate of my ancestor without my parcener, for the common law grants aid in such case.

*Westcote*. On our part we say that you ought not to have it; for if we granted aid for the reason they demand it we should be allowing that Christiana died seised in her own demesne as of fee, and by so doing we should abate our own writ and lose our right to the assize.

STAUNTON J. The demandants cannot grant aid in these circumstances, but the Court ought to grant it, for the law permits the parcener to come; and then you can plead to the assize.

## COWYN v. IREMONGER.

## I.

John of B. brought his mortdancestor against Richard Iremonger and Agnes his wife and Isabel and Joan his sisters, and prayed that it might be recognised by assize that W. Cowyn his uncle was seised of one messuage of three acres of land etc. in B. in his own demesne as of fee the day he died etc. and that etc. Mortdancestor.

*Ingham*. Sir, this is a possessory writ and ought to be brought upon the seisin of the last seised, and we say that after the death of W. Cowyn one Joan entered as daughter and heir, and was seised and alienated. Judgment of the writ.

*Cant.* sa seisine ne nous doit nure qar ele entra come nostre tolleresse qar ele est bastard.

HERVI est Jone en vye.

*Ingham* oyl.

HERVI donques vochez<sup>1</sup> cele qar debate cesti bref de la drein<sup>2</sup> seisine cele qi est en pleyne vye nous<sup>3</sup> tiel receiveroms point qar si nous vodroms chacer le demandant a respondre a<sup>4</sup> sa seisine nous ne<sup>5</sup> lui deveyeroms<sup>6</sup> point <sup>7</sup>qil ne dirreit qe sa<sup>8</sup> seisine ne nous<sup>9</sup> doit nure<sup>10</sup> qar ele est bastarde et ceo ne voloms mie qar ceo serroit a trier lestat cele qest en vye saunz estre partie en court mes si vous la vouchez ele peut venir et clamer etc. et issint estre partie.

*Ingham* Jeo enteng qe aussi come le clamer gist en bouche de privee aussi fet<sup>11</sup> excepcion de dreyn seisi en bouche de straunge.

HERVI si vous volez dire qele soit morte il couvent qil responde ou si vous volez dire qele <sup>12</sup>entra apres la mort Willem com fille et heir <sup>13</sup>et morust seisie<sup>14</sup> nous<sup>15</sup> abateroms le bref.

GOLDPINTONE. Le clamer dorreit avantage al demandant <sup>16a</sup> son<sup>16</sup> bref de droit com de oster <sup>17</sup>le de<sup>17</sup> bataille<sup>18</sup> mes la dreyne seisine qe vous aleggez ne lui dorreit nule avantage per qey le voucher gist plus naturelment qe ne fet lexcepcion de dreyn seisi dautre part excepcion de dreyn seisi ne gist poynt naturelment si homme ne donne <sup>19a</sup> au tiel<sup>19</sup> bref de la seisine celui <sup>20</sup>de<sup>21</sup> qi il alegge<sup>22</sup> la dreyne seisine et de ceo furent <sup>23</sup>compaignouns en diverses oppiniouns et pur ceo si vous volez dire qele <sup>24</sup>out<sup>25</sup> et tynt<sup>26</sup> et morust seisi nous le receiveroms <sup>27</sup>par qey.<sup>27</sup>

*Ingham* <sup>28</sup>fust chace dire<sup>29</sup> autre chose qi dit Sire<sup>30</sup> assise ne doit estre qar<sup>31</sup> il ly ad une Jone fille et heir mesme celui W. de qi mort etc. <sup>32en</sup><sup>33</sup> vye<sup>34</sup> Jugement si saunz<sup>35</sup> cele <sup>36</sup>peuse rien demander.<sup>36</sup>

*Cant*<sup>37</sup> taunt amounte qe nous ne <sup>38</sup>fumes pas<sup>38</sup> plus prochein heir <sup>39</sup>plus prochein<sup>40</sup> prest par assise.

HERVI il amounte a plus qar il vous plede al accioun et dit qil iad une Jone fille etc.<sup>41</sup> vivaunte qele etc.

*Cant* en taunt com il dit qil iad une Jone etc.<sup>42</sup> en taunt est il a travers de ceo qe jeo dy qar jeo suy plus prochein heir et en taunt il plede al assise de la procheinete.

<sup>1</sup> €, <sup>2</sup> *ζ* add mesme. <sup>3</sup> *ζ* omits. <sup>4</sup> vous δ, €, *ζ*. <sup>5</sup> de δ. <sup>6</sup> δ omits.  
<sup>6</sup> veyroms δ. <sup>7-10</sup> a dire qe sa seisine ne luy greveroit *ζ*. <sup>8</sup> la δ. <sup>9</sup> ly δ.  
<sup>11</sup> gist *ζ*. <sup>12-14</sup> morust seisie et qe ele entra com fille et heir *ζ*. <sup>13-15</sup> donques δ.  
<sup>16-18</sup> en δ, *ζ*. <sup>17-19</sup> de la δ. <sup>18</sup> δ adds et del grant assise: *ζ* adds etc. <sup>19-21</sup> bon *ζ*.  
<sup>20-22</sup> en qi persone vous aleggast *ζ*. <sup>21</sup> a δ. <sup>23</sup> δ adds touz ses.  
<sup>24-26</sup> entint *ζ*. <sup>25</sup> oust δ. <sup>27-29</sup> etc. δ; *ζ* omits. <sup>28-30</sup> *ζ* omits.  
<sup>29</sup> pleder δ. <sup>30</sup> δ adds donques plederoms autre voie et vous dioms qe.  
<sup>31</sup> δ, *ζ* add nous vous dioms qe. <sup>32-34</sup> *ζ* omits. <sup>33</sup> € adds pleyne.  
<sup>35</sup> vivant δ, €, *ζ*. <sup>36-38</sup> action poez aver *ζ*. <sup>37</sup> Bacon *ζ*. <sup>38-40</sup> som  
<sup>39</sup> mi *ζ*. <sup>40</sup> *ζ* adds nous sumes. <sup>41</sup> *ζ* adds heir. <sup>42</sup> et heir William €, *ζ*.  
<sup>42</sup> file et heir William €, *ζ*.

*Cambridge.* Her seisin ought not to prejudice us, for she entered as our tolleress, being a bastard.

STAUNTON J. Is Joan alive?

*Ingham.* Yes.

STAUNTON J. Then vouch her; as otherwise we cannot receive you to oppose this writ by alleging the later seisin of one who is still alive; for if we forced the demandant to answer the allegation of Joan's seisin we could not prevent him pleading that such seisin ought not to prejudice him as Joan was a bastard, and that is a course we cannot take, for it would amount to trying the estate of a living person without her being party in court. But if you vouch her she can come and claim etc. and so be party.

*Ingham.* I submit that just as a claim lies in the mouth of one who is party so does the exception of last seised lie in the mouth of a stranger.

STAUNTON J. If you want to say that Joan is dead, then the tenant must answer; but if you want to say that she entered after William's death as daughter and heiress and died seised, then we shall abate the writ.

GOLDINGTON J. <sup>1</sup>If Joan were to come in answer to a voucher and were to claim the right, she would thereby give the demandant the advantage of battle, but the exception of latest seised which you are raising would oust him from the right of battle and give him no advantage. Consequently the voucher seems to lie more properly than the exception of latest seised. Moreover the exception of latest seised does not properly lie unless the defendant suggests a good writ by naming him in whom he alleges the latest seisin was <sup>2</sup>—*but touching this the Justices were not agreed*—and so if you wish to say that she was in possession and held and died seised, we will receive that plea.

*Ingham* was forced to plead over and said: Sir, the assize ought not to be, for there is one Joan alive who was daughter and heiress of this William, upon whose death etc. Judgment whether in her absence the demandant can claim aught.

*Cambridge.* That amounts to saying that we are not the next heir. Ready to aver by assize that we are next heir.

STAUNTON J. It amounts to more than that, for he is pleading to your action and says that one Joan that was daughter etc. is alive etc.

*Cambridge.* In as much as he says that one Joan etc. in so much he is traversing what I say, namely that I am the next heir, and in so much he is pleading to the assize on the question of proximity.

<sup>1-2</sup> The text must be corrupt here, and nothing like an exact translation is possible. See Introduction, p. xiii.



*Stonore* noun fet mes il vous bie barrer daccioun vivante cele par qey il vous covent respondre sil ieyt une <sup>1</sup>en vie<sup>1</sup> ou noun.

*Malm*<sup>2</sup> si la court nous chace a respondre al<sup>3</sup> estre <sup>4</sup>cele Jone<sup>4</sup> nous sumes en mesme le meschief com avant qar si nous devoms respondre sil ieyt nule tiele nul homme ne nous <sup>5</sup>peut <sup>6</sup>denier<sup>7</sup> a dire<sup>8</sup> qe son estre ne nous deit nure qar ele est bastard mes <sup>9</sup>cest<sup>10</sup> cas ou nous fumes<sup>11</sup> ore il alegga qil iad une Jone en pleyne vye vivaunte qele etc. et jeo vey qele est<sup>12</sup> hors et nient partie au play en qel cas jeo enteng il est bon response a dire qe la ou il alegge qe Willem<sup>13</sup> ad une tiele fille et heir en vye qe W. morust saunz heir de son corps prest.

<sup>14</sup>*Pas* certes<sup>15</sup> ceo serroi <sup>16</sup>le droit<sup>17</sup> issue de cest play a<sup>18</sup> ceo qil plede del home<sup>19</sup> qele<sup>20</sup> est hors qi estre est<sup>21</sup> alegge mes <sup>22</sup>si ele<sup>22</sup> feust tenaunte aliud esset.<sup>23</sup>

*Cant* la ou il dit qil iad une Jone<sup>24</sup> etc. la dioms nous qe W. morust saunz heir de son corps prest daverrer etc.

*Ingham* fust chace a <sup>25</sup>respondre a<sup>25</sup> cel averrement et dit quod non.<sup>26</sup>

Lassise vynt et dit qil iaveit une tiele Jone fille et heir <sup>27</sup>par qey etc. nichil per breve.<sup>28</sup>

## II.<sup>29</sup>

Johan le Irmongere porta son bref de Mordancestre de la mort Thomas son uncle.

*Ingh.* nous conisoms bien qe Thomas morust seisi apres qi mort entra une Johane com fille et heir et seisi fut et aliena et cet<sup>30</sup> un bref de possession etc. jugement etc.

*Caunt.* Johane fut bastarde prest etc.

STAUNT. il dient qe Johane entra com fille etc. fut ele seisie ou ne mie.

*Caunt.*<sup>31</sup> nous conisoms<sup>32</sup> bien qe ele fut seisie mes sa seisine nous ne deit greuer qar ele est bastarde prest etc.

*Ingh.* cet un bref de possession et vous meme qe le portet alleget

<sup>1-1</sup> from  $\delta$ ,  $\epsilon$ ,  $\zeta$ .      <sup>2</sup>  $\delta$ ,  $\epsilon$ ,  $\zeta$  add La ou il alegge lestre une tiel vivant qele nous ne pomes accion auer, but  $\zeta$  has assi qe for qele.      <sup>3</sup> a son  $\delta$ ,  $\zeta$ .      <sup>4-4</sup>  $\delta$ ,  $\zeta$  omit.  
<sup>5-7</sup> veira  $\zeta$ .      <sup>6-8</sup> doner  $\delta$ .      <sup>9-12</sup> ore est ele  $\zeta$ .      <sup>10</sup> en le  $\delta$ .      <sup>11</sup> sumes  $\delta$ ,  $\zeta$ .  
<sup>13</sup> qun tiel W.  $\delta$ .      <sup>14-26</sup> *Cant* fut chace a receiver cel averement qui dixit quod non habebatur (*sic*) talem filiam etc.  $\epsilon$ .      <sup>15</sup> oyl noundien  $\delta$ ; oyl a noundieu  $\zeta$ .  
<sup>16-17</sup>  $\delta$  omits.      <sup>18-23</sup> bon respons la ou ele est hors et nent partie al plee a ceo qe il plede qi estre est alegge mes si il fust tenant aliud esset  $\zeta$ .  
<sup>18</sup> et  $\delta$ .      <sup>19</sup> heure  $\delta$ .      <sup>20</sup> qil  $\delta$ .      <sup>21</sup> il  $\delta$ .      <sup>22-22</sup> sil  $\delta$ .      <sup>24</sup> tiel en plein vie Johane file et heir William de qi mort  $\zeta$ ;  $\delta$  adds fille et heir W. etc. vivant qele.  
<sup>25-25</sup> rescevir  $\delta$ ,  $\zeta$ .      <sup>27</sup>  $\zeta$  adds William.      <sup>27-28</sup> fut agarde qil prist rien par son bref,  $\delta$ ,  $\epsilon$ ,  $\zeta$ ; to which  $\epsilon$  adds set in misericordia etc.      <sup>29</sup> Reported by  $\eta$  and  $\theta$ . Text from  $\eta$  collated with  $\theta$ . Repetitions due to the scribe's carelessness are unusually numerous.  
<sup>30</sup> cest  $\theta$ .      <sup>31</sup>  $\theta$  omits, and makes what follows part of STAUNTON J.'s speech.      <sup>32</sup> supplied from  $\theta$ .

*Stonore.* He is not doing that, but he wants to bar you from action upon the ground that such an one is alive, wherefore you must answer whether there be such an one alive or not.

*Malmerthorpe.* If the court compel us to answer as to the existence of this Joan we are in the same difficulty as before ; for if we admit by our answer that there is such a person no one can prevent us from saying that her existence ought not to prejudice us, she being a bastard. But in the circumstances in which we are it is alleged that there is one Joan alive who etc. and I note that she is out of court and no party to the plea, and, this being so, I submit that it is a good answer to say that whereas the tenant alleges that William has a daughter and heiress alive we say that W. died without heir of his body. Ready.

*Passeley.*<sup>1</sup> That would certainly be the proper issue to take here when one whose existence is alleged is not party ; but, if such an one were tenant, it would be otherwise.

*Cambridge.* Whereas he says that there is one Joan etc., we say that W. died without heir of his body. Ready to aver etc.

*Ingham* was forced to answer this averment, and he denied it.

The assize came and said that there was such a Joan, daughter and heiress etc. Wherefore the demandant got naught by his writ.

## II.

John Iremonger brought his writ of Mortdancestor upon the death of Thomas his uncle.

*Ingham.* We admit that Thomas died seised, [but say that] after his death one Joan entered as daughter and heiress and was seised and alienated ; and this is a possessory writ etc. Judgment etc.

*Cambridge.* Joan was a bastard. Ready etc.

STAUNTON J. They say that Joan entered as daughter etc. Was she seised or not ?

*Cambridge.* We admit that she was seised, but her seisin ought not to prejudice us, for she is a bastard. Ready etc.

*Ingham.* This is a possessory writ, and you who bring it are alleging

<sup>1</sup> *Passeley* is probably speaking as *amicus curiae*.

bastarde qe est en le dreit et issi pledet vous plus haut qe la nature de bref veut jugement si a ceo deuez auenir.

STAUNT. vous auez dit qe Johane entra<sup>1</sup> apres la mort Thomas com fille et heir etc. et vostre excepcioun ne est pas pleine si vous ne diet qe Johane est mort pur quei si vous volet meintenir dites qe ele est mort.

Ingh. excepcion de dreyn seisi est done a estranger et clamet a priues mes si Johane fut einz et bref porta vers ly ele poit clamer et abatre vostre bref et depus<sup>2</sup> qe nous allegoms la cause<sup>3</sup> meme jugement si mester eoms a conustre si ele seit mort ou en vie.

STANT. si ele seit en vie vous la poet vocher<sup>4</sup> et donc<sup>5</sup> pus ele clame<sup>6</sup> si ele veit ausicom auint de bref de Mordancestre qe fut porte vers la Dame de Kaynes qe allega la dreynne seisine un Robert qe fut en vie et ne put estre ressue et pus mene meme ceti Robert ou<sup>7</sup> ly en court et garranti de gre et clama par meme la decete et abata le bref. Et estre ceo si Johane est en vie etc. vostre excepcion chereit al accion qar le demandant nest pas plus procheyn heir et estre ceo il dient qe la seisine Johan<sup>8</sup> ne les deit greuer pur ceo qe ele est bastarde et sil furent a ceo ressu ele seit<sup>9</sup> en sa vie bastarde et nient partie estre ceo si ele fut en vie le demandant ne put auer bref de sa mort et pur ceo qe ele fut en vie.

Ingh. weyua la excepcion et dit qe la ou il porte cete bref de la mort Thomas son uncle meme ceti Thomas auoit une fille Johane mudlere<sup>10</sup> et est en pleine vie jugement<sup>11</sup> si vivant ly deuert estre respondu.

Caunt. Tant amonte qe nient plus prochein heir lassise etc.

Ston. Il dient qe Thomas ad une fille Johane en vie donc vous a demander de la seisine Thomas com heir costein ou Johane est en la dreite ligne si vous ne mustret mustret [*sic*] qe sa seisine ne deit greuer nentendoms pas qe vous deuert estre ressu.

Malm. Si Johane meme qe vous dites estre en vie dites en vie [*sic*] fut einz et bref portet vers ly qe deit qe ele fut entre com fille et heir Thomas en tel cas il couendreit qe le demandant demandant [*sic*] mustrast qe le estre de cele ne ly dust greuer mes a vous qi estes estrange ly suffit de averer qil est plus prochein est plus prochein [*sic*] heir.

<sup>1</sup> *θ* omits.      <sup>2</sup> del houre *θ*.      <sup>3</sup> seisine *θ*.      <sup>4</sup> *θ* adds a garrantie,  
<sup>5-6</sup> pust ele clamer *θ*.      <sup>7</sup> oue *θ*.      <sup>8</sup> supplied from *θ*.      <sup>9</sup> seroit *θ*.  
<sup>10</sup> moiller *θ*.      <sup>11</sup> Ingham *θ*.



bastardy, which goes to the right ; and so you are pleading a plea of a nature higher than the nature of your writ. Judgment whether you should be received to that.

STAUNTON J. You have said that Joan entered upon the death of Thomas as daughter and heiress etc. Your exception is not complete unless you say that Joan is dead. Wherefore, if you want to maintain your exception, say that she is dead.

Ingham. The exception of last seised is allowed to a stranger and you are claiming to be party. If Joan were in and the demandant brought a writ against her she could claim and abate your writ ; and, since we are making the same defence, we ask judgment whether we need say whether she is alive or dead.

STAUNTON J. If she be alive you can vouch her and then she can claim, if she wish, as happened in the writ of mortdancestor brought against the Lady of the Manor of Kaynes. She alleged the latest seisin of one Robert who was alive and could not be received. And afterwards [she joined] this same Robert with her and he willingly<sup>1</sup> warranted her and claimed by the same descent and abated the writ. And, further than this, if Joan be alive etc. your exception would go to the action, for the demandant would no longer be the next heir. And, again, they say that Joan's seisin ought not to prejudice them, for she is a bastard ; but, if they were received to say that, she would be bastardised during her life without being party. And yet again, if she be alive the demandant cannot have a writ upon her death, she being yet alive.

Ingham waived the exception and said that whereas the demandant brings this writ upon the death of Thomas his uncle that same Thomas had a daughter Joan legitimate and still living. Judgment whether he is entitled to an answer, Joan being still alive.

Cambridge. That is equivalent to saying that we are not next heir. We pray the assize.

Stonore. They say that Thomas had a daughter Joan who is alive ; and since you are claiming as collateral heir upon Thomas's seisin, and Joan is in the direct line, you must show that her seisin ought not to prejudice you, or you ought not to be received.

Malmerthorpe. If Joan, who you say is alive, were in court and the demandant were bringing a writ against her, and she said that she had entered as daughter and heiress of Thomas, then, in such a case, the demandant would have to show that her existence should not prejudice him ; but as she is not party to you it is sufficient if you aver that Thomas is next heir.<sup>2</sup>

<sup>1</sup> i.e. without his being forced by legal process.

<sup>2</sup> Malmerthorpe is probably speaking as *amicus curiae*.

*Caunt.* Thomas morust seisi<sup>1</sup> sanz heir de son cors et nous sumes son plus prochein heir prest etc. prest etc. [*sic*].

Et sic ad assisam qe vint et dit qe Johane fut fille et heir Thomas et mudlere<sup>2</sup> et qe Johane ne fut pas plus prochein pas plus prochein [*sic*] heir etc. Et ideo nihil cepit per breve.<sup>3</sup>

III.<sup>4</sup>

Mort-  
dauncestre.

Johan porta une assise de mortdauncestre de la mort son uncle.

*Ingham* la ou il porte son bref etc. nous vous diom qe apres sa mort entra en meme les tenemenz une Alice feile et heir out et tient et fu seisi et ceo est un bref etc. jugement etc.

*Cant.* la seisine Alice ne nous deit nuyr ne de cesti bref ouster qar nous vous dioms qele est bastard prest etc.

*Ingham* nostre exception qe nous mettoms avant est tot en la possession et vostre replication est en le droit issint pledez vous plus haut qe nest la nature de vostre bref par quei il semble que vous abatez vostre bref demene.

SPIGURNEL est Alice en pleine vie.

*Ingham* Sire oil.

SPIGURNEL coment serreit ceste bastardie averre.

*Cant.* cy einz par averrement du pais pur ceo qel nest mie en court ne partie au ple et en court Cristiene home ne trie james bastardie en absence de partie.

*Toud.* a la replication.

*Ingham.* si Alice fut tenant et clama par meme la descente jeo serra bon reson [*sic*] a replier en le droit et dire qe clamer ne poez qar vous estes bastard tot seit le bref de possession et sil ne abate mie son bref et [*sic*] serra cesti trie par la court Cristiene.

*Malm.* dit qil nentendist pas qil serreit resceu de replier.

ANON. v. ANON.<sup>5</sup>

Mordancestour ou piert qy home navera mye eide sil pura vocher soul.

Mort-  
dancetour.

En un mortdancetour fut dit qe le tenemenz furent donez a lui et a soun baroun en fraunc mariage et soun baroun fut mort et il<sup>6</sup> avoient issue un<sup>7</sup> Johan de qi il prieront eide.

*Toud.* Eide ne devez avoir qe vous poez soul vocher.

<sup>1</sup> *θ* omits.      <sup>2</sup> moiller *θ*.      <sup>3</sup> assisam *θ*.      <sup>4</sup> Text of (III) from ζ (second version).      <sup>5</sup> Reported by α, aa, β, λ. Text from α collated with β. Head note in β only.      <sup>6</sup> ele β.      <sup>7</sup> de β.

*Cambridge.* Thomas died seised without heir of his body, and we are his next heir. Ready etc.

And so to the assize, which came and said that Joan was daughter and heiress of Thomas and legitimate, and that John was not his next heir etc. And so John took naught by his writ.

## III.

John brought an assize of mortdancestor upon the death of his uncle. Mort-  
dancestor.

*Ingham.* Whereas he brings his writ etc. we tell you that upon his uncle's death one Alice entered upon these same tenements as daughter and heiress, and had and held them and was seised; and this is a [possessory] writ etc. Judgment etc.

*Cambridge.* Alice's seisin ought not to prejudice us, nor to oust us from this writ, for we tell you that she is a bastard. Ready etc.

*Ingham.* Our exception which we put forward goes entirely to possession, and your replication is to the right; consequently your plea is of a higher nature than your writ; and so we submit that you are abating your own writ.

SPIGURNEL J. Is Alice alive?

*Ingham.* Yes, Sir.

SPIGURNEL J. How ought this bastardy to be averred?

*Cambridge.* In this court by averment of the country, for Alice is not present nor is she party to the plea; and in Court Christian bastardy is never tried in the absence of the party.

*Toudeby* spoke in support of the replication.

*Ingham.* If Alice were tenant and I claimed by the same descent I should certainly be received to reply in the right and to say that you cannot claim because you are a bastard, even though the writ be a possessory one; and, if he does not abate his own writ, this issue will have to be tried in Court Christian.

*Malmerthorpe* submitted that [the tenant] should not be received to reply.

## ANON. v. ANON.

Mortdancestor where it was held that one who can vouch alone cannot have aid.

In a mortdancestor a woman said that the tenements were granted to her and to her husband in frank marriage, and that her husband was dead, and that there was issue one John, of whom she prayed aid. Mort-  
dancestor.

*Toudeby.* You ought not to have aid for you can vouch alone.



*Pass.* Si nous feisons defaute etc. il serreit receu a defendre soun dreit par quei etc.

*SPIG.* Vous naverez <sup>1</sup>nul eide<sup>2</sup> si vous ne voilletz<sup>3</sup> dire autre chose pur quei vous devez eide aver.

#### ANON. v. ANON.<sup>4</sup>

Mortdancestour ou piert qe conusance de enfant dedeinz age ne abate mye son bref. Secus sil ust este de plein age.

En un mortdancestour *Ingham*: Ceo est un bref de possession Et voet estre porte<sup>5</sup> de la mort le drein seisi et vous dioms qe un William apres la mort R. soun pere entra ceux tenemenz com fitz et heir et seisi fut et demandoms jugement du bref.

*Toud.* qe sil morust seisi donqes<sup>6</sup> il vous covient qe vous nous donez action de la mort celui etc.

*Ingham.* nous vous dioms qil fut seisi pus la mort celui de qi mort vous portez cest assise.

*SPIG.* il covient qe vous diez qil morust seisi ou qil aliena ou assigna en noun de dowair.

<sup>7</sup>*Ing.* nous vous dioms qil fut seisi et assigna a sa mere en doware et demaundoms jugement.<sup>8</sup>

*Toud.* et nous jugement desicom<sup>9</sup> vous avez conu qil la dowa com de soun dreit de dowerre issi qe la seisin qil avoit a soun oeps demene ne peut retenir si par cele seisine puissez nostre bref abbatre.

*SPIG.* le quel est ele de plein age ou dedeinz age <sup>10</sup>supponendum est qe si ele fust<sup>11</sup> de plein age le bref se abatereit et si ele fust deinz age nient.

*Ingham.* de plein age par usage de gavelkynd.

E puis dist qe celui en qi persone la excepcioun de drein seisi fust allegge avoit relese e quite clame e mist avaunt le fet.

Et alii nient soun fet etc.

<sup>1-2</sup> my leyde  $\beta$ .      <sup>3</sup> volez  $\beta$ .      <sup>4</sup> Reported by  $\alpha$ ,  $aa$ ,  $\beta$ ,  $\lambda$ . Text from  $\alpha$  collated with  $\beta$  and  $\lambda$ . Head note from  $\beta$ . The note in  $\alpha$  is: Mortdancestour ou excepcioun de drein seisine fut allegge.      <sup>5</sup> plede  $\beta$ .      <sup>6</sup> ou non  $\beta$ .  
<sup>7-8</sup> from  $\lambda$ .      <sup>9</sup> de puis  $\beta$ .      <sup>10-11</sup> en supposant qil fut  $\lambda$ .

*Passeley.* If we made default [the heir] would be received to defend his right ; wherefore etc.

SPIGURNEL J. You will never get aid unless you can give some better reason than that for getting it.

## ANON. v. ANON.

Mortdancestor where it was held that an assignment by an infant within age did not abate the writ. *Secus* if he had been of full age.

*Ingham*, in a mortdancestor. This is a possessory writ and ought to be brought upon the death of the latest seised, and we tell you that one William entered upon these tenements upon the death of R. his father as son and heir and was seised ; and we ask judgment of the writ.

*Toudeby.* Whether he died seised [or not] you ought to give us some one upon whose death we can have action.

*Ingham.* We tell you that he was seised after the death of him upon whose death you bring this assize.

SPIGURNEL J. You must say that he died seised or that he alienated or assigned by way of dower.

*Ingham.* We tell you that he was seised and assigned to his mother in dower, and we ask judgment.

*Toudeby.* And we ask judgment whether, since you have admitted that he endowed her in satisfaction of her right to dower and so could not have retained for his own benefit the seisin which he had, you can abate our writ by pleading such seisin.

SPIGURNEL J. Is he of full age or within age ?—The supposition being that the writ would abate if he were of full age, but not if he were within age.

*Ingham.* Of full age by the custom of gavelkind.

And afterwards it was said that he in whose person the exception alleged the latest seisin to have lain had released and quitclaimed, and a deed was tendered in proof.

And the other side said that it was not his deed etc.

LE TRIL v. LE MEY.<sup>1</sup>

## Note from the Eyre Roll.

The issue for the assize was :—si Alanus le May pater Iohanne uxoris Walteri le Tril fuit seisitus in dominico suo ut de feodo de uno messuagio . . . die quo obiit.

A blank space in the Roll follows a paragraph setting out the above issue, and nothing further has been recorded.

I.<sup>2</sup>

Morddancestour ou age est prie de les uns et eide prie de les autres et leyde countour plede ou piert qe tut entra lancestour par abatement apres qy mort ij. entrerent com un heir checun avera eide dautre.

Wauter Trille et Juliane sa femme porterent un assise de mortdancestour vers Richard le fiz Wauter le Mai Thomas et Johan ses freres et vers Gile le Mai vers Alice la file Gy<sup>3</sup> Rauf le Mai et pria qe reconu fut <sup>4</sup>par assise<sup>5</sup> si Alein le May pere ceste Juliane le May fust seisi en soun demene come de fee des certeinz tenemenz etc. et voleit le bref : et somone Richard le fiz Wauter le May Thomas et Johan ses frerz qe taunt tenent et somone Gy qy tient taunt et somone Alice la filie Rauf le Mai qe de ceo entent<sup>6</sup> taunt.

*Ingham.* Richard <sup>7</sup>Thomas et Johan<sup>8</sup> qe sount nomez en un somonse vous dient qe un Wauter le Mai lour pere fust seisi de ceux tenemenz vers eaux demaundez en soun demene com de fee et morust seisi apres qi mort mesmes ceux Richard Thomas et Johanne entrerent ceux tenemenz com fiz et heirs et seisi furent com de lour heritage etc. et vous dient qe Thomas et Johan sount deinz age et prient lour age. Guy vous dit qe les tenemenz vers lui demandez ensemblement ove autres tenemenz furent en la seisine un Alein le May qe de ceux tenemenz morust seisi en soun demene com de fee apres qi mort entrerent en ceux tenemenz Wauter Guy et Raufe com freres et un heir et partirent entre eux lour heritage issi qe ceux tenemenz ore demandez furent assignez a Guy a sa purpartie en alowance des autres tenemenz qe furent assignez a Wauter et a Raufe a lour pourpartie dount de Wauter descendi sa purpartie a Richard Thomas et Johan com a fitz de Rauf descendi sa purpartie a Alice come a file saunz les queux Gy ne puet mye ceux tenemenz mener en jugement et prie eide de eux

<sup>1</sup> Reported by *a*, *aa*, *β*, *γ*, *γγ*, *ε* and *λ*. Names of the parties from E.R.

<sup>2</sup> Text of (I) from *a* collated with *β* and *λ*. Head note from *β*. The note in *a* is : Morddancestour ou chesqun parcener pria eide dil autre. <sup>3</sup> This name seems to be misplaced. It should probably come before *Alice*. See four lines lower down in the text. <sup>4-5</sup> *λ omits*. <sup>6</sup> tient *β*. <sup>7-8</sup> et Thomas *λ*.



## TRILL v. MAY.

## I.

Mortdancestor where some pray their age and each side prays aid of the other and counter-pleads to the aid prayer of the other side. *Semble* that each of two who entered as one heir upon the death of their ancestor, even though such ancestor entered by abatement, is entitled to aid from the other.<sup>1</sup>

Walter Trill and Juliana his wife brought an assize of mortdancestor against Richard the son of Walter May, Thomas and John, his brothers, against Giles May, against Guy<sup>2</sup> and Alice the daughter of Ralph May ; and they prayed that it should be recognised by assize that Alan May, the father of the said Juliana May, was seised in his own demesne as of fee of certain tenements, etc. ; and the writ ran :—‘ And summon Richard the son of Walter May, Thomas and John his brothers, who hold so much, and summon Guy who holds so much, and summon Alice the daughter of Ralph May who holds so much thereof.’

*Ingham.* Richard, Thomas and John, who are summoned by one summons, tell you that one Walter May, their father, was seised in his own demesne as of fee of these tenements which are demanded from them, and that he died seised. Upon his death these same Richard, Thomas and John entered upon these tenements as sons and heirs, and were seised as of their heritage etc., and they tell you that Thomas and John are within age and pray their age. Guy tells you that the tenements demanded from him were, together with other tenements, in the seisin of one Alan May, who died seised of those tenements in his own demesne as of fee. Upon Alan’s death Walter, Guy and Ralph entered upon those tenements as brothers and a single heir, and apportioned their heritage amongst them so that the tenements now demanded were assigned to Guy as his share, as the equivalent of other tenements which were assigned to Walter and Ralph as their shares. Walter’s share descended afterwards from himself to Richard, Thomas and John, as his sons. Ralph’s share descended from himself to Alice as his daughter ; and without these Guy cannot bring these tenements into judgment and he prays aid of them. Alice tells you that she

<sup>1</sup> For the sake of lucidity the head note has been somewhat expanded in the translation given above.

<sup>2</sup> See note \* on opposite page.

Alice vous dit qele tient ceux tenemenz vers lui demandez en purpartie o les avaunt diz Richard Thomas et Johan et Gui ut supra saunz les queux etc. Et prie eide etc.

*Stonore.* Quant a Richard Thomas et Johan la ou vous dites qil sunt entrez le tenemenz vers eux demandez apres la mort Wauter lour pere qe de ceux tenemenz morust seisi et qe Thomas et Johan sount dedeinz age nous vous dioms qe Wauter lour pere ne morust pas seisi et qe mesmes ceux Richard Thomas et Johan sount les primers qe se abaterent apres la mort Alein nostre auncestour. Et quant a Guy et Alice qe prient eyde et dient qe Alein Mai lour auncestour morust seisi de ceux tenemenz et des autres apres qi mort entrerent les avaunt diz Wauter Guy et Rauf com freres et heir entre le queux la purpartie se fit en la fourmie avaunt dit et dites qe de Wauter isserent Richard et Thomas et Johan et de Rauf Alice et prie chescun eide dautre ut supra <sup>1</sup>eide ne deviont aver kar la ou vous dites qe Alein le Mai morust seisi et Wauter Guy et Rauf entrerent come freres et heir entre queux la purpartie se fit nous vous dioms qe mesme cetui Alein Mai fut le pere Juliene<sup>2</sup> qe ore porte cest assise dount en taunt qe vous avez dit qe Wauter Guy et Raufe entrerent com freres et heir assez avez dit qe Juliene<sup>2</sup> nest paas plus prochein heyr et issi sumes a lassise par qei eide ne devez avoir.

*SPIG.* vous nestes paas a lassise kar il dit qil ne peut oier la reconis-  
aunce dil assise saunz ses parceners.

*Ston.* uncore ne devient il eide avoir kar la ou nous demandoms com filie et plus prochein heir nous grauntoms lour dit<sup>3</sup> estre verray saver qe Wauter Guy et Raufe entrerunt com freres et heirs Alein prochein et la il entrerent<sup>4</sup> com nos tollours par qei nous ne pooms cest aide graunter.

*SPIG.* vous estes tout en un autre caas qe vous ne seriez vers Wauter Gy et Raufe qe entrerent com freres etc. kar Wauter morust seisi de sa purpartie apres qi mort <sup>5</sup>entrerent Richard Thomas et Johan come fiz et heir en lour heritage et Raufe morust seisi apres qi mort<sup>5</sup> entra Alice com filie et issi tut fuissent lez avaunt ditz Wauter Guy et Raufe voz tollours vous ne poez mie dire qe lour heirs qe sount entrez apres lour mort sount vos tollours kar il sunt entrez com en lour heritage.<sup>6</sup>

*Ingham.* il covient qe nous eioms eide kar autrement si nous perdissons ces tenemenz nos parceners retendront lour purparties saunz fere etc. qe sereit encountre lei par qei nous demandoms jugement etc.

<sup>1</sup> *λ adds Sthon.* Sire.  
vous dioms qil entrerent.  
eide.

<sup>2</sup> Jon β; Johane λ.  
<sup>3</sup> *λ omits.*

<sup>3</sup> demande β.

<sup>4</sup> *λ adds*  
<sup>6</sup> *λ adds* il covient qe nous eioms

holds these tenements demanded from her in purparty with the aforesaid Richard, Thomas, John and Guy *as above*, without whom etc. And she prays aid etc.

*Stonore.* As to Richard, Thomas and John, whereas you say that they entered upon the tenements demanded from them after the death of Walter their father, and that he died seised of them, and that Thomas and John are within age, we tell you that Walter their father did not die seised, and that these same Richard, Thomas and John are the first abators after the death of Alan our ancestor. And as to Guy and Alice, who pray aid and say that Alan May their ancestor died seised of these tenements and of others, and that upon his death the aforesaid Walter, Guy and Ralph entered as brothers and [a single] heir, amongst whom apportionment was made after the manner aforesaid, and [whereas] you say that Richard, Thomas and John were Walter's issue, and that Alice was Ralph's issue, each of whom prays aid of the others, *as above*, [we say] that you ought not to have aid; for whereas you say that Alan May died seised, and that Walter, Guy and Ralph entered as brothers and [a single] heir, amongst whom apportionment was made, we tell you that this same Alan May was the father of Juliana who now brings this assize. Seeing, then, that you have said that Walter, Guy and Ralph entered as brothers and heir, you have said in effect that Juliana is not the next heir; and so we are at the assize; wherefore you ought not to have aid.

SPIGURNEL J. You are not at the assize, for he says that he cannot hear the recognition of the assize without his parceners.

*Stonore.* For yet another reason he ought not to have aid; for, since we are claiming as daughter and next heir, [if we grant aid] we grant the truth of their allegation, to wit, that Walter, Guy and Ralph entered as brothers and next heirs of Alan; but they so entered as our tollers, and therefore we cannot grant this aid.

SPIGURNEL J. You are in a quite different position from the one you would be in if you were claiming against Walter, Guy and Ralph who entered as brothers etc., for Walter died seised of his share; and Richard, Thomas and John entered at his death upon their heritage as sons and heir; and Ralph died seised, and upon his death Alice entered as daughter; and so, though the aforesaid Walter, Guy and Ralph might have been your tollers, you cannot say that their heirs who entered after their death are your tollers, for they entered as upon their heritage.

*Ingham.* We ought to have aid, for if we do not have it and then lose these tenements our parceners will retain their shares without making us compensation, which would be contrary to the law; and therefore we ask judgment etc.



II.<sup>1</sup>Mort-  
dauncestre.

Watier Trille porta son bref de mortdauncestre de la mort Aleyn son piere vers W. le fitz Watier T. et J. ces freres.

*Ingham* quant a euls il dient qil sunt entrez mesme les tenementz apres la mort lor auncestre qi de ceuls tenementz deuia seisi et il entrerunt par succession de heritage et sunt dedenz age et priunt lor age.

STAUNTONE<sup>2</sup> vostre auncestre ne morust pas seisi prest etc.  
et alii e contra.

Nota ex hoc : ubi antecessor obiit seisitus heres habebit etatem si ingressus fuerit per successionem etc.

III.<sup>3</sup>Mort-  
dauncestre.

Jone porte <sup>4</sup>une assise de<sup>4</sup> mort dauncestre vers un Jon Adam Thomas et Willem et Alice et pria qe <sup>5</sup>reconu fust<sup>5</sup> etc. si Aleyn son piere fust seisi etc. de certains tenementz etc. et si ele soit plus prochein heir et furent les summons tiels summe Johanne<sup>m</sup> qi taunt tient et Thomas Adam Willem qi taunt entienent et predictam Aliciam qi taunt entient.

*Hengham* pur Jon respond com tenaunt des tenementz vers lui demandez et dit : Syre apres la mort Aleyn entrerent en les tenementz qe ore sount demandez iij. freres com un heir videlicet un Richard Thomas et cesti Jon qi ci est et departirent les tenementz entre eux dount de Richard decendi sa purpartie a Thomas Adam et Willem come fitz et un heir vers ceux ceo bref est porte de Thomas decendi sa purpartie a Alice com a fille saunz qeus Jon ne peut respondre et prie eide de eux. Thomas Adam et Willem qi sount issu de Richard frere Jon vous dient qe Richard lour piere morust seisi des tenementz vers eux demandez et eus entrerent com fitz et un heir et dient qe Thomas et Adam<sup>6</sup> sount denz age et prient qe tute la parole demoerge <sup>7</sup>saunz jour<sup>7</sup> taunt qe a lour age. E Alice pria eide de Jon et de les autres com Jon fist.

*Stonore.* Qaunt a Thomas Adam et William qi sount issu de Richard et qi prient lage Thomas et Adam etc. pur ceo qe Richard lour piere morust seisi etc. la dioms sire qe lour piere ne morust pas seisi et qe eux sount les primers qi entrerent etc. apres la mort nostre piere de qi mort etc. et prest par assise par qey lour age ne deyvent attendre e qaunt a Jon qi prie eide de ses parceners la dioms nous qe nous portoms cesti bref de la mort Aleyn et dioms qe nous sumes plus prochein heir etc.

<sup>1</sup> Text of (II) from  $\gamma\gamma$ .

<sup>2</sup> *sic*; but apparently a speech of Counsel.

<sup>3</sup> Text of (III) from  $\gamma$  collated with  $\epsilon$ . <sup>4-4</sup> from  $\epsilon$ . <sup>5-5</sup> from  $\epsilon$ ; reconusent  $\gamma$ .

<sup>6</sup> Willem  $\epsilon$ . <sup>7-7</sup>  $\epsilon$  omits.

## II.

Walter Trill brought his writ of mortdancestor upon the death of Alan his father against W. the son of Walter, T. and J. his brothers. Mort-  
dancestor.

*Ingham.* As to those, they say that they entered these same tenements upon the death of their ancestor who died seised of these tenements, and that they entered by succession of heritage; and they are within age and pray their age.

STAUNTON J.<sup>1</sup> Your ancestor did not die seised. Ready etc.

And the other side joined issue.

Note from this that where the ancestor dies seised the heir shall have his age if he have entered by succession etc.

## III.

Joan brings an assize of mortdancestor against John, Adam, Thomas and William and Alice, and prayed that it should be recognised that Alan her father was seised etc. of certain tenements etc. and that she was the nearest heir; and the form of the summons was: 'summon John who holds so much, and Thomas, Adam and William who hold so much, and the aforesaid Alice who holds so much.' Mort-  
dancestor.

*Ingham* answers on behalf of John as tenant of the tenements demanded from him and says:—Sir, after the death of Alan three brothers, to wit, one Richard and Thomas and this John who is here, entered as one heir upon the tenements that are now demanded, and apportioned the tenements amongst them. Richard's share descended to Thomas, Adam and William, against whom this writ is brought, as to sons and one heir. Thomas's share descended to Alice as his daughter. Without these John cannot answer, and he claims aid of them. Thomas, Adam and William, who are the sons of Richard the brother of John, tell you that Richard their father died seised of the tenements demanded from them, and that they entered as sons and one heir, and they say that Thomas and Adam are within age, and they pray that the whole matter may stand over *sine die* until their age. And Alice prayed aid of John and the others as John had done.

*Stonore.* As to Thomas, Adam and William who are Richard's issue and pray the age of Thomas and Adam etc. because Richard their father died seised etc., we say, Sir, that their father did not die seised, but that they were the first who entered etc. after the death of our father upon whose death etc., and we are ready by assize etc.; wherefore they ought not to await their age. And as to John who prays aid of his parceners we tell you that we bring this writ upon the death of Alan

<sup>1</sup> See note<sup>2</sup> on the opposite page.

e <sup>1</sup>taunt qil<sup>1</sup> dit qil entra et ses freres com prochein heirs apres la mort Aleyn entaunt est il a travers de nous de la procheinete et issint plede<sup>2</sup> al assise et gaunt al eide vous veez bien coment il est del saunk costeyn Aleyn et Jone est la fille mesme celi Aleyn et porte cesti bref de sa mort etc. dount nentendoms pas qe Jon qest nostre tolour de noz tolours deive eide avoir qar sire si nous ly grauntasoms eide de eux come de ceus qi entrerent apres la mort Aleyn com freres et plus prochein heirs etc. nous defroms nostre accioun demene etc.

HERVI. les iij. freres sount vos tolours qi entrerent apres la mort Aleyn mes lour issue ne sount mie vos tolours.

*Hengham* Jeo ne peus alegger nule noun ablete en vostre persone <sup>3</sup>com parcener<sup>3</sup> saunz mes parceners ne nule assise attendre saunz eux qe touche le commun heritage par qey il covent qe jeo eie eide et si jeo feice ceo serroit a mon peril com a perdre ma purpartie et eux retenir lour purpartie etc.

Et furent ajornez etc.

IV.<sup>4</sup>

Un Alicz porta un assise de mortdauncestre de la mort J. son pere vers un Guy Cecil J. Robert et William. Et dit qe le bref summe Guy qe taunt <sup>5</sup>de terre<sup>5</sup> tient <sup>6</sup>qil seit doyer la reconisance.<sup>6</sup> Et summe Cecil qe taunt <sup>7</sup>de terre<sup>7</sup> tient etc. Et summe J.<sup>8</sup> qe taunt etc.

*Ingham*. quant a J. R. et W. nous vous dioms qe R. lour pere de ceux tenemenz qil tiengnent qe sunt deuers eux demandez morust seisi apres qi mort il entra<sup>9</sup> com fitz et heir pur ceo qe les tenemenz sunt departables etc. et R. et W. deinz age et prient lour age. <sup>10</sup>G. respond<sup>10</sup> qe un Johan de B. de ceux tenemenz qe sunt demandez vers ly par cesti bref morust seisi etc. apres qi mort les tenemenz descendirent a iij.<sup>11</sup> freres<sup>12</sup> saver a etc.<sup>13</sup> e G. est issue Cecil qest nome en bref de Richard fut issue J.<sup>14</sup> et W. nome<sup>15</sup> parceners saunz les queux il ne pout rien respondre et prie eyde etc. Et Cecil respond en mesme la manere et prie eyde etc.

*Stonore*. quant a J. <sup>16</sup>et R.<sup>16</sup> qe sunt deinz age <sup>17</sup>et prient lour age lour noun age ne nous deit greuer ne<sup>17</sup> nostre bref targer qar la ou il dient qe Richard lour auncestre des tenemenz morust seisi etc. apres qi mort etc. nous vous dioms qe <sup>18</sup>eux iij.<sup>18</sup> sunt nos tollours et les primers qi entrerent apres la mort J. de qi mort nous portoms ceste

<sup>1-1</sup> la ou il €. <sup>2</sup> pleidoms €. <sup>3-3</sup> € omits. <sup>4</sup> Text of (IV) from δ collated with ζ. <sup>5-5</sup> ζ omits. <sup>6-6</sup> ζ omits. <sup>7-7</sup> ζ omits. <sup>8</sup> R. et W. ζ. <sup>9</sup> eux entrerent ζ. <sup>10-10</sup> HERVI vous respone ζ. <sup>11</sup> trois ζ. <sup>12</sup> ζ adds com a plus prochein heirs. <sup>13</sup> G. Richard δ. <sup>14</sup> ζ adds et R. <sup>15</sup> cez ζ. <sup>16-16</sup> R. et W. ζ. <sup>17-17</sup> ceo ne deit ζ. <sup>18-18</sup> mesmes ζ.



and we say that we are the nearest heir etc. And in his allegation that he and his brothers entered as nearest heirs upon the death of Alan he is traversing us as to proximity and consequently pleading to the assize ; and, as to the aid, you see clearly that he is descended collaterally from Alan, while Joan is Alan's own daughter and brings this writ upon his death etc. We do not understand, therefore, why John who tolled our entry should have aid from our other tollers ; for, Sir, if we grant him aid of them as of those who entered upon Alan's death as his brothers and nearest heirs etc. we are upsetting our own writ etc.

STAUNTON J. The three brothers who entered upon Alan's death are your tollers, but their issue are not your tollers.

*Hingham.* I cannot, as a parcener, allege nonability in your person without [the aid of] my co-parceners, nor can I, without them, abide any assize touching the common heritage, and if I were to do so I should run the risk of losing my own share, while they would keep theirs ; and so I ought to have aid.

And the parties were adjourned etc.

#### IV.

One Alice brought an assize of mortdancestor upon the death of J. her father against Guy, Cecil, J., Robert and William. And the writ said 'summon Guy who holds so much land to appear and hear the recognition. And summon Cecil who holds so much etc. And summon J. who holds so much etc.'

*Ingham.* As to J., R. and W. we tell you that R. their father died seised of these tenements holden by them which are now demanded from them. After his death they entered as sons and [a single] heir, the tenements being partible etc., and R. and W. are within age and pray their age. G. answers that one John of B. died seised of these tenements which are demanded from him by this writ, and that upon his death the tenements descended to four brothers, namely to etc.; and G. is the issue of Cecil who is named in the writ. From Richard J. and W. descended, mentioned as his parceners, without whom he cannot answer, and he prays aid etc. And Cecil answers after the same fashion and prays aid etc.

*Stonore.* As to J. and R. who are within age and pray their age, [we say that] their nonage ought not to prejudice us nor to delay our writ ; for where they say that Richard our ancestor died seised etc. of these tenements and that upon his death etc., we tell you that these three are our tollers and the first who entered after the death of J. upon whose

assise et prest del auerer par assise. Et quant al eyde qe Guy et Cecil prient il ne deiuent eyde auer qil pledent as pointz de lassise qar par la ou il dient qe <sup>1</sup>J. de B.<sup>1</sup> morust seisi etc. apres qi mort entrerent<sup>2</sup> T. et Richard com frers et plus prochein heirs etc. mesme celly J. est celly de qi mort<sup>3</sup> Alice porte cest assise com<sup>4</sup> de la mort son pere et vous nule nounablete en sa persone ne alleggez et<sup>5</sup> dites qe vous entrates com frers et plus prochein heir qest au point de lassise <sup>6</sup>saver a la prochein<sup>6</sup> qe ceste A. nest my prochein heir J. et nous dioms qele fut sa fille et <sup>7</sup>vous nule nounablete nassignez en la persone A. ne rien ne dites pur quei ceste assise ne deit remeindre<sup>7</sup> et prioms lassise.

*Ingham.* Si nous naueroms eyde de nos parceners ensuereit grant duresce qar put estre qe nos parceners vnt relese et quiteclame de ly barrer daccion <sup>8</sup>ou si nous pledissoms sanz eyde nous perdroms nostre purpartie et nos parceners autrefetz barres daccion.<sup>8</sup>

*Stonore.* Vous auez plede al point de lassise et prioms lassise.

SPIGURNEL. Agardez vos iours <sup>9</sup>Lundy prochein apres la Natiuite nostre dame.<sup>9</sup>

### ETHYNGHAM v. SANDWICHE.<sup>10</sup>

#### Note from the Eyre Roll.

The issue for the assize was:—si Iohannes Andreu pater Petronelle uxoris Roberti de Ethyngham fuit seisitus in dominico suo ut de feodo de manerio de Bylsyntone cum pertinenciis die quo etc. Et si etc. quod manerium Nicholas de Sandwico tenet. Nicholas's plea was:—quod de tenementis unde assisa ista arramiata est tenet unum messuagium triginta et quatuor acras et tres rodas terre quatuordecim acras prati tres acras pasture triginta et unam acras bosci et dimidium sexaginta et decem solidatas unam obolatam et unam quadrantatam redditus cum pertinenciis etc. et quo ad tenementa illa dicit quod assisa non debet inde inter eos procedere etc. Dicit enim quod predictus Iohannes pater predictae Petronille aliquo tempore fuit seisitus de predictis tenementis qui tenementa illa concessit et dedit cuidam Iohanni de Sandwico tenenda eidem Iohanni heredibus et assignatis suis etc. per cartam eiusdem Iohannis quam profert.

This charter sets out that John Andrew of Winchelsey grants to 'domino Iohanni de Sandwico omnes terras cum pertinenciis suis que quondam fuerunt domino Iohanni Maunsch in villa de Bilsington quas habui dono domini Regis sicut de sua eschaeta post decessum predicti Iohannis Maunsch habendas et tenendas predicto Iohanni de Sandwico et heredibus suis uel eius assignatis,' and that John Andrew binds himself and his heirs to warranty. The charter

<sup>1-1</sup> B. de T. ζ.      <sup>2</sup> ζ adds G.      <sup>3</sup> seisin ζ.      <sup>4</sup> et ζ.      <sup>5</sup> mes ζ.  
<sup>6-6</sup> ceo est asaver ζ.      <sup>7-7</sup> plus prochein heir ζ.      <sup>8-8</sup> ζ omits.      <sup>9-9</sup> ζ omits.  
<sup>10</sup> Reported by α, aa, β, δ, ε, ζ, κ and λ. Text from α collated with the others.

death we bring this assize ; and we are ready to aver this by assize. And in respect of the aid which Guy and Cecil pray [we say that] they ought not to have aid, for they plead to the points of the assize when they say that J. of B. died seised etc. and that upon his death T. and Richard entered as brothers and next heirs, for this same J. is he upon whose death Alice brings this assize as upon the death of her father ; and, alleging no nonability in her, you say that you entered as brothers and next heir, which is pleading to the point of the assize, to wit, to the proximity, by alleging that this A. is not J.'s next heir ; and we tell you that she was his daughter, and you allege no nonability in A.'s person nor do you say anything in delay of this assize, and we pray the assize.

*Ingham.* If we do not have aid of our parceners great hardship will follow, for it may be that our parceners can show a release and quitclaim from her which would bar her action ; and if we plead without aid we shall lose our share, and be barred from taking action against our parceners [for compensation.]

*Stonore.* You have pleaded to the point of the assize, and we pray the assize.

SPIGURNEL J. Await your day upon the Monday after the Nativity of Our Lady.

#### ETCHINGHAM v. SANDWICH.

##### Note from the Eyre Roll—continued.

then recites that in consideration of this grant and warranty John of Sandwich gives his land in Holewest, together with the sum of a hundred marks, to John Andrew. This land in Holewest, Nicholas pleads, was inherited by Petronel upon the death of her father, and of it she and her husband are now seised. 'Et idem Nicholas petit iudicium si versus ipsum Nicholaum modo assignatum predicti Johannis Andreu assisa procedere debet etc.'

The replication of Robert and Petronel was :—quo ad qualemcunque cartam predictus Nicholaus profert de donis predictis etc. dicunt quod predictus Iohannes Andreu pater etc. de cuius seisina etc. obiit seisis de manerio predicto in dominico suo de feodo etc. Et hoc paratus est [*sic*] verificare per assisam etc.

The Court ruled that Nicholas had not assigned sufficient cause against the assize, and the assize proceeded.

The finding of the assize was :—quod predictus Iohannes Andreu pater predictae Petronille non obiit seisis de predictis tenementis sicut predicti Robertus et Petronilla dicunt.

The judgment was :—quod predictus Nicholaus eat inde sine die et predicti Robertus et Petronilla Nichil capiant per assisam istam set sint in misericordia pro falso clamore etc.<sup>1</sup>

<sup>1</sup> m. 15.



Mortdauncestour ou les tenemenz furent donez en fraunk mariage et la femme fut mort et le baroun pria eide de lour issue et non habuit pur ceo qe le issue poeit devier avaunt soun piere et pus il allegga en barre dassize eschaunges des autres tenemenz resceues par les auncestres les demandantz et non obstante il avoient lassize.<sup>1</sup>

<sup>2</sup>Johan de Etingham<sup>3</sup> et Peronele<sup>4</sup> sa femme porterent un Mortdancestour vers <sup>5</sup>Nicole de Sandwyche<sup>5</sup> del manoir de Bolsigton<sup>6</sup> de la mort<sup>7</sup> Johan Andreu pere <sup>8</sup>lavaunt dite Peronel.<sup>9</sup>

<sup>1</sup> The note in *aa* is:—Mortdancestour ou tenant en fee taile pria eide et ne put mie aver [et puis le tenant alegga eschange]. For the words within brackets *B* has:—per STANTONE e puis auxint par METINGHAM e par Toudeby.

<sup>2-3</sup> Un Robert de Engham ζ. <sup>3</sup> Eltringham ε; Eclingham κ. <sup>2-4</sup> R. de E. et P. δ. <sup>5-5</sup> N. de S. δ; Johan de Sadwik ζ. <sup>6</sup> Belsigton β; W. δ; Swintone ζ; Liffington κ. <sup>6-7</sup> et prièrent qil reconissent par assise si δ; et prièrent qe reconu fut par assise si ζ. <sup>8-9</sup> Peronelle fut seisi en son demene le iour qil morust etc. et si etc. δ; P. fut seisy etc. ζ. <sup>9</sup> From this point the earlier portion of κ is not collatable with the other texts and reads as follows:—

*Malm.* enparla revint e dit qun Johan fust seisi de meyme cest maner e dona le maner a cesti T. e a E. sa femme e a les heirs de lour deux cors engendrez e sil deviassent sanz heir qe le maner deust revertir a donour e vous dioms qe meyme cele E. est morte e unt issue en pleine vie I. par noun en quei le fce repose e cesti T. nad qe terme de vie e prit eide soun issue.

*Toud.* vous poez vouchier par my vostre especialte par quoi vous ne devez eide aver et dautre part une foiz fust graunte en autel cas et pus defait par jugement.

*Malm.* si nous feissoms defaute et volioms les tenemenz perdre et il vensist avant jugement il serroit resceu a defendre.

*Toud.* ceo est dotif e ne purkant ceo serroit par statut.

*Pass.* quant lestatut celi de qi home prie eide est dependant tut de la mort celui qe prie eide il ne deit leide aver mes lestat vostre issue est dependant de la vostre mort par quoi etc.

*Ston.* ad idem. Lestat est tut dependant de vostre mort qar si lissue deviait sanz issue vivant vous nul home par mi lui rien ne pout clamer.

*Malm.* sire nous devioms en vos jugemens.

*HERVY.* gardez vos jours a demain.

*Malm.* sire uncore prioms eide.

*Toud.* vous ne devez eide aver qar autre foith fust il graunte a Stercheshull e pus defait.

*HERVY.* Ieo vous demande de qi heritage vous tenet.

*Malm.* ne voleit respondre.

*HERVY.* respondes outre.

*Malm.* sire nous vous dioms de ceo qil demande com maner nest pas maner mes il ad un mys a tant de terre etc. e vous dioms qe cel mees etc. fust en la seisine W. Andreu piere Pernele qe recust pur cel mes etc. un mees et iiij.<sup>xx</sup> acres de terre en I. des queux tenemenz meyme ceux R. e P. sa femme sount seisi. Jugement si assise deive estre.

*Toud.* vous ne respondes nient a nostre bref mes dites qe nous sumes seisiz dautre terre ceo defense prove nient qe nostre piere morust seisi ne vous ne dites nient qe ceux tenemenz furent donez en eschaunge par quoi nous prioms assise.

*Spig.* Ieo vous vend une terre pur C. mars e receive de vous les c. mars e ne vous mette pas en seisine jeo devie seisi mon fiz sil soit tenu hors par vous il deit recoverir par le mordauncestre ne vous ne lui poet de cella barrer par le contract avant nient plus de ceste part.

*Malm.* grantent qil tenent les tenemenz pur ceux qil demande e deivent en jugement ou dedient et nous le voloms averer.

*Toud.* nous ne voloms rien pleder a ceo qe vous avet dit uncore pur ceo qe nostre dit nest pas contrairie a nostre bref mes pount les deux estre ensemble par quoi etc.

*Malm.* veet sy la chartre I. Andreu qe voelt qil dona e granta a W. de S. ceste

Mortdancestor where the tenements were given in frank marriage. The wife died and the husband prayed aid of the issue but got it not because the issue might die before the father. The tenant then alleged in bar of the assize the receipt by ancestors of the demandants of other tenements by way of exchange; but, notwithstanding this, the demandant had his assize.

John of Etchingam and Petronel his wife brought a mortdancestor against Nicholas of Sandwich upon the death of John Andrew, father of the aforesaid Petronel, in respect of the manor of Bossington.

*Malm.* <sup>1</sup>cest manoir fut en asqun temps en la seisine un Johan de Sandwycke qe cel maner dona a N.<sup>2</sup> et a B.<sup>3</sup> en fraunc mariage. B.<sup>4</sup> est mort e meisme cetui Nichole et B. ont issue un Johan qest en pleine vie saunz qy etc.<sup>5</sup> e priom eide de lui.

<sup>6</sup>*Pass.* eide ne devez avoir de Johan kar il attent tut soun estat apres la mort N.

*Ston.* ad idem Johan pout devier avant N. et en la vie N. nad il rien.

*Wescote.* il<sup>7</sup> peut vouchier sulom la fourme et estre garaunty solom la forme par qei rien ne descend<sup>8</sup> a Johan.<sup>9</sup>

*SPIG.* nous ne agardoms nul eide en cest cas.

*Toud.* Jeo ay vewe en tiel<sup>10</sup> caas <sup>11</sup>leide graunte et puis par Sire Johan de Metingham <sup>12</sup>tut fut<sup>12</sup> reverse.

*Malm.* donqe vous dioms nous qe assise ne deit estre kar<sup>13</sup> Johan

terre demande e obliga lui e ses heirs a la garanter et pur cel doun grant e garrante lavantdit I. de S. done sa terre en I. e c. marcs par quoy respondez a ceo fait.

*Pass.* quioique vous diez de la chartre W. A. fust seisi avant la confection et en la confection e pus morust seisi prest daverer par assise.

<sup>1-4</sup> sire ceo qe il appellant maner ne est pas maner eynz est un mies iiij<sup>xx</sup> acres de terre c. acres de boys xv. acres de pree et xvi. acres de pasture les quels tenements furent en la seisine un Johan de Sandwych qy ces tenementz dona a meyme cesty Nichole e a Margerie sa femme en franc mariage e Margerie e. <sup>2</sup> Nicholas de Sandewyk ζ; δ *adds* de S. <sup>3</sup> J. sa femme δ; Johane sa femme ζ. <sup>3-5</sup> et a les heirs de lour corps engendre et avoint issue Johan et Johana. J. femme N. est mort et issint N. tenant forge de franc tenement et le fee et le droit taille repos en la persone Johan saunz qi etc. δ, ζ. <sup>6-4</sup> (p. 29) δ, collated with ζ, reads as follows:—

*Toud.* Vous ne devez eyde aver qar vous <sup>a</sup>estes celly qi<sup>a</sup> poez doner plus haut respons qe celly qe vous priez en eyde qar vous poez vouchier et si ne put pas lissue qest partie vivant son pere qe fut partie al don pur quei etc. *Mal.* si N. fait defaute apres defaute Johan serreit resceu a defendre son droit et par consequens il <sup>b</sup>put estre<sup>b</sup> prie en eyde. *Toud.* nous veymes une fetz<sup>c</sup> tiel eide estre grante et pus fut cele eide par agarde rapelle. <sup>d</sup>*Stonore.* Johan put devier avant Nichol et issint ad il rens par quay eyde ne devez aver.<sup>e</sup> STANT. respondez qe nous grantoms ia eyde.<sup>f</sup>

*Malm.* ceo qil apelait maner ceo nest forsque un meson iiij<sup>xx</sup> acres de terre <sup>g</sup>v. acres de pree un<sup>g</sup> boys et un<sup>h</sup> mark de rente <sup>a</sup>oue les appurtenances<sup>a</sup> etc. Et vous dioms qe en droit de cele assise ne deit estre qar nous vous dioms qe Johan de Sandewyk pere meme cesti Nichol dona a Johan Andreu pere Peronel meme cesti mees et vj<sup>i</sup> acres de terre oue les appurtenances en C. pur memes les tenemenz qore sunt en demande des queux tenemenz R.<sup>k</sup> fut seisi et <sup>l</sup>J. et C.<sup>l</sup> hui ceo iour sunt seisi jugement si assise deuve estre.<sup>m</sup> <sup>7</sup> Nichole e. <sup>8</sup> depiert e. <sup>9</sup> e *adds*

*Malm.* lissue serroit resceu a defendre son droit par quei nous averroms eide mes ceo ne fust mye grante de tutz. Et tut fust issint fust dit qe ceo ne fust pas semblable. <sup>10</sup> meyme le e. <sup>11</sup> e *adds* entre certains personnes. <sup>12-12</sup> fust tut le proces e. <sup>13</sup> quare nous vous dioms qe e.

<sup>a-a</sup> ζ *omits.* <sup>b-b</sup> serra ζ. <sup>c</sup> foithe en un plee ζ. <sup>d-e</sup> from ζ.  
<sup>e-f</sup> HERVI. respondez qar nous agardoms qe vous ne devez eide aver ζ. <sup>g-h</sup> v/xx acres de ζ. <sup>h-v.</sup> ζ. <sup>i</sup> un vi.<sup>xx</sup> ζ. <sup>k</sup> Johan ζ. <sup>l-m</sup> Robert et Peronel ζ. <sup>m</sup> ζ *adds* il nout ren dit par quay nous ne devons al assise atamer et priom lassise. *Frisq.* Nous vous diom qe certeinz tenemenz furent donez a Johan pere Peronel pur mesure les tenemenz etc. des quex vous estes mesme seisi. Jugement si assise deuve estre. *Wescote.* a ceo qe vous ditez qe certain tenementz etc. ad regard a un temps en la vie Johan Andreu et nostre action ad regard a un autre temps de la mort Johan Andreu issint qe vostre respons et nostre accion unt regard a divers temps et pout ester ensambel et priom lassise.



*Malmerthorpe.* This manor was at one time in the seisin of John of Sandwich, who granted it to Nicholas and to B. in frank marriage. B. is dead, and these same Nicholas and B. have issue, one John, who is alive, without whom etc. and we pray aid of him.

*Passeley.* You ought not to have aid of John, for he does not attain his full estate until Nicholas's death.

*Stonore ad idem.* John may die before Nicholas and while Nicholas lives he has naught.

*Westcote.* Nicholas can vouch according to the form and be warranted according to the form ; wherefore naught descends to John.

SPIGURNEL J. We do not award aid in these circumstances.

*Toudeby.* I have seen aid granted in like circumstances, and afterwards refused by Sir John of Mettingham.

*Malmerthorpe.* Then we tell you that assize ought not to come,

Andreu pere Peronel qe heir ele est recent de Johan de Sandwiche certeinz tenemenz en Holewest pur ceux tenemenz ore demandes des queux tenemenz Johan Andreu fust seisi e morust seisi e Robert de Etingham<sup>1</sup> e Peronel sa femme<sup>2</sup> huy ceo jour seisi par qei nous demandoms jugement dil houre qil sount seisz de la terre<sup>3</sup> la quele lour auncestour resceut pur cele terre qest ore demande si assise deive estre et mist avant la chartre Johan Andreu qe voleit qil dona et graunta a Johan de Sandwyche etc. e obliga lui et ses heirs a la garauntie et pur ceo doun graunt et garauntie lavaunt dit Johan de Sandwyche moy ad done sa terre de Holewest et c. marcz.<sup>4</sup>

*Toud.* vous ne dites rien par qei lassise deive remeindre<sup>5</sup> par qei nous prioms lassise.<sup>6</sup>

*Pass.* qei qi dites vous de la chartre Johan Andreu nostre auncestour

<sup>1</sup> Echingham e. <sup>2</sup> e adds sunt. <sup>3</sup> e adds de Holewest. <sup>4</sup> See note <sup>6-4</sup> on previous page. <sup>5</sup> targer λ.

<sup>6</sup> From here to end δ, collated with ζ, reads as follows:—*Hert.* Veez ici le fet Johan Andreu qe tesmoigne qil resceut les tenementz \*en C. pur les Tenemenz\* qore sunt en demande et R. et P. hui ceo iour seisi des tenemenz qe Johan resceut pur les tenemenz <sup>b</sup>vous nous demandez<sup>b</sup> Jugement si assise deive estre. Et fut le fet tiel: Sachent tote gent qe ieo Johan Andreu ay done a Johan de S. le maner de Swyntaie a ly et ses heirs etc. Et donqe a la fine de la chartre \*fut une tiel clause apres la garanti<sup>c</sup> pur qeu doun grant et confirmacion et garanti leuant dit Johan mad done les tenemenz en C. a moy et a mes heirs.

*Malm.* de pus qe ceo fet est le fait Johan<sup>d</sup> tesmoignant qe \*Johan Andreu\* resceut les tenemenz en C. pour le doun grant confirmacion et garanti des tenemenz qe sunt en demande et obliga par fet ly et ses heirs a la garanti et R. et P. de memes les tenemenz issint receuz a ore seisi et issint ount quid pro quo jugement si assise deive estre.

*Toud.* la ou il mettent auant un fet qe tesmoigne qe Johan Andreu dona ceux tenemenz qe sunt ore en demande et<sup>f</sup> resceut les tenemenz en C. des queux vous estes hui cest iour seisi vous nous respondes par la.

*Toud.* nul ley de Mound nous chacera dautre chose a pleder en ceo cas si noun a les poinz dassise.

*Wescote.* il ount meme conu qe Johan Andreu nostre auncestour mourust seisi des tenemenz qore sunt en demande et le fet qil mette auant \*nest pas de recorde fors<sup>g</sup> seulement une evidence en barre dassise et prioms lassise.<sup>h</sup>

STANT. attendez vos iours tanqe a nous prochein venuz a qeu iour.

*Malm.* dit com avant qe assise ne deit estre qar veez ici le fet Johan Andreu par le quel il reconust qe pour le doun grant confirmacion et garranti del maner de Assigtone auoit resceu les tenemenz en H. Johan Andreu mourust seisi apres qi mort P. entra com fille et heir et hui ceo iour seisi etc. et N. seisi du maner de A. et auoit il resceu les tenemenz en H. ensemblement oue C. marz des queux tenemenz en H. Johan Andreu mourust seisi apres qi mort P. entra com fille et heir et hui ceo iour seisi est et N. seisi du maner de A. Jugement si assise deuie etc.

SPIGURNEL. pur ceo qe vous alleggez my une eschaunge mes une doun done par un autre de qeu doun un ne pout my demander un garanti sil ne fut expressement note en la chartre pur quei nous comandoms al viconte qil face venir lassise etc.

<sup>a-a</sup> from ζ. <sup>b-b</sup> dont nous som seisi ζ. <sup>c-c</sup> from ζ. <sup>d</sup> ζ adds Andreu. <sup>e-e</sup> il ζ. <sup>f</sup> a J. de Sandwyk qe J. Andreu morust seisi en son demeyne com de fee prest etc. par lassise. STANTON vous ne respondes nent a la force de lour plee qi il dient qe Johan Andreu par le grant et le confermement et la garantie de tenemenz qe ore sunt en demande ζ. <sup>g-g</sup> ne put recorder mes ζ. <sup>h</sup> δ ceases to be collatable with ζ from this point.

for John Andrew, Petronel's father, whose heiress she is, received from John of Sandwich certain tenements in Holewest in exchange for these tenements that are now demanded, of which tenements John Andrew was seised and died seised ; and Robert of Etchingham and Petronel his wife are seised of them to-day. Wherefore, seeing that they are seised of the land which their ancestor received in exchange for the land which is now demanded, we ask judgment whether the assize should be awarded—and he tendered John Andrew's deed which testified that he gave and granted to John of Sandwich etc. and bound himself and his heirs to warranty, and that ' in consideration of such grant and warranty the aforesaid John of Sandwich has given me his land at Holewest and a hundred marks.'

*Toudeby.* You allege no reason why the assize should not come ; wherefore we pray the assize.

*Passeley.* Notwithstanding what you say about the charter [we



fust seisi avaunt la confeccioun de la chartre et en la confeccioun de la chartre et puis <sup>1</sup>morust seisi<sup>1</sup> prest dil averrer par lassise.

*Frisk.* conisez le fest ou dedites <sup>2</sup>car<sup>3</sup> si vous volez cest fet<sup>4</sup> voider il vous covient<sup>5</sup> graunter et puis<sup>6</sup> dire<sup>7</sup> pur qey il ne vous doit grever.<sup>8</sup>

*Westcote.* <sup>9</sup>nous navoms point mestre<sup>9</sup> a graunter<sup>10</sup> ne dedire saunz ceo qe vostre response <sup>11</sup>ne soit barre a nous<sup>11</sup> mes en bref de possessioun si homme met avaunt encountre moi la chartre moun auncestour <sup>12</sup>en supposaut qil se demist en sa vie<sup>12</sup> jeo serrai bien resceu daverer moun bref <sup>13</sup>saver qil morust seisi<sup>13</sup> par qei etc.

*Spig.* nous tenoms differencz entre ceste chartre et comune chartre qe ceste chartre fet mencioune qe votre auncestour resceut certains tenemenz pur ceux tenemenz ore demandez et vous<sup>14</sup> ne respondez<sup>15</sup> nient le quel vous receutes les tenemenz <sup>16</sup>de H.<sup>16</sup> pur le tenemenz demaundez ou noun.

*Ston.*<sup>17</sup> nous navoms mestre fors qe a meintiener nostre bref <sup>18</sup>saver qe nostre auncestour morust seisi. Estre ceo la ou il dient qe nostre auncestour resceut <sup>19</sup>la terre de H.<sup>19</sup> pur <sup>20</sup>ceste terre<sup>20</sup> ore demaunde<sup>21</sup> et vous nous mettez a pleder a ceste terre de H.<sup>22</sup> vous dioms qe nous navoms mestre a ceo la pleder fors qe seulement a la terre qe nous demandoms de la quele terre nous dioms qe nostre auncestour morust seisi et prioms lassise.

<sup>23</sup>GOLD. ad idem. vous mustrez bien coment il est auenuz a la terre de Holeweste mes coment vous estes auenu a la terre qe est ore en demande vous ne mustrez point.<sup>23</sup>

*Spig.* Jeo pose qil dist en la chartre pur cel doun me ad il done cent marz ceo ne serreit paas cause de barrer cest assise <sup>24</sup>nient plus<sup>24</sup> en ceste cas.<sup>25</sup>

*Malm.* syre nous vous dioms qe Johan Andreu auncestour <sup>26</sup>la dame<sup>26</sup> dona ceux tenemenz ore demaundez a Johan de Sandwych et resceut pur meme les tenemenz la terre de H. de la quele terre il est hui ceo jour seisi et demaundoms jugement etc.

*Pass.* nous vous dioms qe Johan Andreu ne dona point einz morust seisi <sup>27</sup>et prioms lassise.<sup>27</sup>

*Hert.* <sup>28</sup>syre nous vous dioms qe Johan<sup>28</sup> Andreu vostre auncestour

<sup>1-1</sup> etc. e sa seisine continua tantqe il morust €. <sup>2-7</sup> avant qe vous pledet a la voidance et quant vous lavet conu dites κ. <sup>3</sup> quare €. <sup>4</sup> supplied from β. <sup>5</sup> € adds primes. <sup>6</sup> € adds poez. <sup>8</sup> noier ζ. <sup>9-9</sup> Jeo nay mistre ζ. <sup>10</sup> conustre le €. <sup>11-11</sup> ne fust de tele force qe il poeit estre barre a nous €. <sup>12-12</sup> de quy jeo prent mon title encountre cele chartre κ. <sup>13-13</sup> etc. ζ. <sup>14</sup> € adds respnz al un point de la chartre e dites qil ne dona point eyns morust seisi e al altre point. <sup>15</sup> ζ adds fors qe al un point et ditez qe il dona point enz morust seisy et al autre ne respnez. <sup>16-16</sup> de Holewest €, κ; en Holdernes ζ. <sup>17</sup> Stanch κ; λ omits. <sup>18</sup> €, κ add cest. <sup>19-21</sup> ζ omits. <sup>19-19</sup> les tenementz de Holwest €, κ. <sup>20-20</sup> ces tene-ment €, κ. <sup>22</sup> Holewest €, κ; Holdenez ζ. <sup>23-23</sup> supplied from €. <sup>24-24</sup> ζ omits. <sup>25</sup> ζ adds par quay nous prioms lassise, but the words are marked for excision. <sup>26-26</sup> from β, € and κ. <sup>27-27</sup> etc. ζ. <sup>28-28</sup> ζ omits.

say that] John Andrew our ancestor was seised before the making of the charter and at the time of the making of the charter, and that he afterwards died seised. Ready to aver by assize.

*Friskeny.* Admit the deed or deny it; for if you wish to avoid this deed you ought to admit it and then show why it should not prejudice you.<sup>1</sup>

*Westcote.* We need neither admit nor deny it so long as your answer is not in bar of us; for if, under a possessory writ, my ancestor's charter, alleging that he granted in his lifetime, be put in evidence against me, I shall be received to aver my writ, to wit, that he died seised. Wherefore etc.

SPIGURNEL J. We distinguish between this charter and an ordinary charter; for this charter recites that your ancestor received certain tenements in exchange for the tenements now in demand, and in your answer you do not say whether or not you received the tenements in Holewest in exchange for the tenements in demand.

*Stonore.* We need do naught but support the allegation of our writ, namely, that our ancestor died seised: Again, where they allege that our ancestor received the land in H. in exchange for this land in demand and you tell us to plead as to this land in H., we tell you that we need plead to nothing but the land which we are now demanding; of which land we say that our ancestor died seised, and we pray the assize.

GOLDINGTON J., *ad idem.* You show well enough how he came by the land in Holewest, but you do not show how you came by the land now in demand.

SPIGURNEL J. Suppose that John Andrew had said in his charter 'in consideration of this grant-John of Sandwich has given me a hundred marks.' That would have afforded no reason in bar of this assize; neither do the actual circumstances.

*Malmerthorpe.* Sir, we tell you that John Andrew, the lady's ancestor, gave these tenements now in demand to John of Sandwich and received in exchange for them the land in H., of which land he is to-day seised; and we demand judgment etc.

*Passeley.* We tell you that John Andrew never granted, but that he died seised; and we pray the assize.

*Hartlepool.* Sir, we tell you that John Andrew your ancestor granted

<sup>1</sup> *Friskeny* seems to be intervening here as *amicus curiae*.

dona a Johan de Sandwych les tenementz<sup>1</sup> ore demaundez pur queux tenementz il resceut les tenementz de <sup>2</sup>H. en eschaunges<sup>2</sup> des queux il sount seisi par resoun des queux eschaunges il <sup>3</sup>ne deit garanter.<sup>3</sup> Jugement.

SPIG. vous nestes nient en caas deschaunges proprement car jeo pose qe Jon<sup>4</sup> de Etingham<sup>5</sup> et Peronele sa femme fusent enpledez<sup>6</sup> et vous vouchassent a garauntie <sup>7</sup>il nad nule ley<sup>7</sup> qe vous chacereit a la garauntie etc.

HERVI ad idem. vous dites qe Johan Andreu vous dona ceux tenementz ore demaundez<sup>8</sup> et pur cel doun resceut autres tenementz il diunt qe Johan Andreu ne dona point issi estes vous a tranvers<sup>9</sup> et vous ne moustrez nule chose de record qe proeve vostre dit par quei il covient enquere<sup>10</sup> ceste verite par assise.

Malm. si <sup>11</sup>le fet<sup>11</sup> qe nous metoms avaunt fut conu il serreit de auxi graunt<sup>12</sup> force come une fin par quei del heure qe nous <sup>13</sup>mettoms avaunt ut supra<sup>13</sup> il covient <sup>14</sup>qil responde.<sup>14</sup>

Westcote. la chartre <sup>15</sup>est nule chose de recorde <sup>16</sup>qe le tesmoigne<sup>17</sup> et il diunt qil ne dona point einz morust seisi et nient plus nestes vous <sup>18</sup>a creere a vostre dit<sup>18</sup> qe ne sount eux<sup>19</sup> par quei il covient <sup>20</sup>ceste verite enquere par<sup>20</sup> assise etc.

<sup>21</sup>Et lendemeine SPIG. demaunda sil voleient <sup>22</sup>pleder e plus<sup>23</sup> dire a barer ceste assise.

Malm. <sup>24</sup>Sire volenter<sup>25</sup> si vous la gardez.

SPIG. <sup>26</sup>diez<sup>27</sup> ceo la par la<sup>28</sup> quele vous biez estre eide <sup>29</sup>car le fest<sup>30</sup> ne prove mie les eschaunges car ele ne suppose forsqe Johan Andreu dona ceux tenemenz a Johan de Sandwych car coment qe le<sup>31</sup> die en la fin<sup>32</sup> pur cest doun e confirmacioun et garauntie <sup>33</sup>jeo ay resceu<sup>33</sup> autres tenemenz etc. la<sup>34</sup> chartre ne suppose forsqe un doun qe<sup>35</sup> ne barre mie assise par quei viconte fetes venir lassise.

<sup>36</sup>Et pur ceo qe dit fut en pledaunt qe ceo qil demaunda come manoir ne fut fors qe certain noubre des acres de terre et de bois

<sup>1</sup> ε, κ add de Bilsington. <sup>2-2</sup> Holewest ε, κ. <sup>3-3</sup> from ε and κ; α and β read nous garauntera. <sup>4</sup> Robert α, ε, κ. <sup>5</sup> de Echingham ε, κ; Engham ζ. <sup>6</sup> ε, κ add de lor terre de Holewest. <sup>7-7</sup> nous ne unt nul chose ζ. <sup>8</sup> ε, κ adds a Johan de Sandwych ut supra. <sup>9</sup> contrarie ε, κ. <sup>10</sup> qe hom enquerge ε, κ. <sup>11-11</sup> lestat λ. <sup>12</sup> haut α. <sup>13-13</sup> etc. ζ. <sup>14-14</sup> qil responde al fet ε, κ; qe vous reponez al fet ζ. <sup>15-17</sup> ne proeve mye le doun. SPIG. Vous dites qe il vous dona par ceste chartre, e ne mustrez pas fet de record qe ces tesmoigne. <sup>16-17</sup> ζ omits. <sup>18-18</sup> from ε and κ; α gere, α, β; acreer ζ; acrer λ. <sup>19</sup> ils de lur dit ε, κ. <sup>20-20</sup> enquere par ε, κ; prendre ζ. <sup>21-23</sup> SPIG. Volez altre chose. <sup>22-23</sup> from β; α, ζ omit. <sup>24-25</sup> e Frisq. Oyl ε. <sup>26-30</sup> La chartre de quele vous vous eidez ε. <sup>26-28</sup> La chose de ζ. <sup>27</sup> from β; originally in α, but erased. <sup>29-30</sup> from β; α, ζ omit. <sup>31</sup> ele ε, κ; il ζ. <sup>32</sup> ε, κ add e. <sup>33-33</sup> il ly ad done ε, κ. <sup>34</sup> Qe ε, κ. <sup>35</sup> e doun ε, κ. <sup>36</sup> From here to the end ε reads; lassise vint et dist qe Johan ne morust pas seisi. Par quei agarde fust qe R. et Peronele ne preissent rien par ceste assise. E. N. a Dieu sanz jour etc. κ adds Lassise vint.



the tenements now in demand to John of Sandwich and received the tenements in H., of which tenements they are now respectively seised. By reason of such exchanges we need not be warranted. Judgment.

SPIGURNEL J. You have not to do with exchanges properly so called ; for I put the case of John of Etchingham and Petronel his wife being sued and vouching you to warranty. There is no law by which you could be compelled to warrant etc.

STAUNTON J. *ad idem*. You say that John Andrew granted you these tenements now in demand and that in consideration of this grant he received other tenements. The other side say that John Andrew did not grant ; and so you are at issue ; and, as you tender nothing that is of record in proof of your assertion, the truth must be enquired of by assize.

*Malmerthorpe*. If the deed which we tender were admitted it would be as conclusive as a fine ; wherefore since we tender it *as above* they ought to answer it.

*Westcote*. The charter is not a matter of record so as to be conclusive evidence ; and they say that he did not grant, but died seised ; and you have no better claim to be believed than they have ; and so the truth of the matter ought to be enquired of by assize etc.

And on the morrow SPIGURNEL J. asked whether they wanted to plead further in bar of this assize or to say aught more.

*Malmerthorpe*. Certainly, sir, if you award it.

SPIGURNEL J. Say before it what you think will help you ; for the deed does not prove the exchanges, as it only says that John Andrew gave these tenements to John of Sandwich ; for whatever may be said at the end of it to the effect that 'in consideration of this grant and confirmation and warranty I have received other tenements etc.' the charter only proves a grant, which does not bar an assize. Wherefore, Sheriff, call the assize.

And because it was said during the hearing that what the demandants demanded as a manor was only a certain number of acres of land

<sup>1</sup>et certeine rente<sup>1</sup> *Ston.*<sup>2</sup> en evidence de lassise dit qe le Roy <sup>3</sup>Henri ael le Roi qe ore est<sup>3</sup> dona les tenemenz<sup>4</sup> demaundez a Johan Andreu com manoir et mist avaut la chartre le Roy Henri<sup>5</sup> qe le tesmoigna.

Lassise dist qe Johan Andreu dona cel manoir<sup>6</sup> de B.<sup>6</sup> a Johan de S. pur <sup>7</sup>mesmes ses terres<sup>7</sup> en H.<sup>8</sup> et lui livra la seisine et resceut la seisine des autres terres<sup>9</sup> issi qe Johan Andreu ne morust pas seisi par qe <sup>10</sup>il ne prist rien<sup>10</sup> etc.

ANON. v. ANON.<sup>11</sup>I.<sup>12</sup>

Mortdauncestour ou un des tenaunz allegga qe le demaundant fut seisi de la parcele qe a ly afferait et seisi fut jour dil bref purchase et demaunda jugement de bref sour quei lassise agarde ou dit fut qil fut mieuz daver allegge nountenure et avoir plede a les poinz dil bref pur ceo qe la court les tint a graunte.

Treis freres porterunt un assise de mortdauncestre de v. acres de terre etc. Les deus ne suierent point furent somouns et seueriez et quaut a tierce qe sui

*Bacoun.* il <sup>13</sup>mesmes est<sup>14</sup> seisi de ceo qe affert a sa purpartie et fut le jour dil bref purchace jugement du bref.

*Caunt.* dunqe grauntez vous les pointz de nostre bref et nous voloms averrer qe vous estes pleinement tenaunt de nostre demande.

*Bacon.* tut seez vous seisi de ceo qe vous affert peut estre qe par pourchatz etc. par quei par taunt ne sount mie les pointz de vostre bref grauntez.

SPIGURNEL. en taunt come vous dites qil est seisi et la court entent qe launcestre morust seisi depuis qe vous ne le dedites point.

Par quei fut agarde lassise taunt soulement sour cel point sil fut tenaunt de sa purpartie ou noun pur ceo qe la court tient les pointz du bref a grauntez.

Et dit fut qil pout mieuz aver plede par les justices daver allegge nountenure de taunt qe le demaundaunt tient etc. et si trove soit et aver plede au pointz du bref.

<sup>1-1</sup> etc. κ.      <sup>2</sup> *Stanh.* κ.      <sup>3-3</sup> etc. λ.      <sup>4</sup> κ adds ore.      <sup>5</sup> ael λ.  
<sup>6-8</sup> etc. κ; ζ omits.      <sup>7-7</sup> certain tenemenz β; certains terres λ.      <sup>8</sup> Holdenes ζ.  
<sup>9</sup> κ adds en H.      <sup>10-10</sup> agarde fust qil ne preist rien par sa plainte κ.      ζ omits.  
<sup>11</sup> Reported by α, αα, β, γγ, and ζ.      Noted in *Fitzherbert's Abridgment*, Mortdauncestre, 40.      <sup>12</sup> Text of (I) from α collated with β. The note in αα and β is, with slight variations in spelling:—Mordancestre porte par treis ou deux ne suirent pas: furent somons et seueriez le tenant dit qe le demandant fust seisi de taunt com afferait a ly. Meutz serreit avoir alegge nountenure.      <sup>13-14</sup> est memus β.

and wood and a certain rent, *Stonore* said, in supporting his case before the assize, that King Henry, grandfather of the present King, granted the tenements in demand to John Andrew as a manor, and he tendered the charter of King Henry in proof of this.

The assize said that John Andrew granted this manor of B. to John of S. in exchange for John of Sandwich's lands in H. and delivered seisin thereof to him and received seisin of the other lands, so that John Andrew did not die seised ; wherefore the demandants took naught etc.

## ANON. v. ANON.

## I.

Mortdancestor where one of the tenants alleged that the demandant was seised of the parcel accruing to him and that he was so seised upon the day of the purchasing of the writ ; and he demanded judgment of the writ. The assize was thereupon awarded, and it was said that the tenant should have rather alleged nontenure and pleaded to the points of the writ, which the court held to be granted.

Three brothers brought an assize of mortdancestor in respect of five acres of land etc. Two of them did not prosecute their claim and were summoned and severed. And in answer to the third, who appeared—

*Bacon.* He himself is seised of what constitutes his share, and was seised on the day of the purchasing of the writ. Judgment of the writ.

*Cambridge.* You grant, then, the points of our writ ; and we will aver that you are tenant of our full demand.

*Bacon.* Though you are seised of your share it may be that you have it by purchase etc. ; and in such case the points of your writ would not be granted.

SPIGURNEL J. Inasmuch as you say that he is seised, the Court infers that his ancestor died seised, since you do not say that he did not.

Therefore the assize was granted upon the sole question whether the tenant was tenant by purchase or not, for the Court held that the points of the writ were granted.

And it was said by the Justices that it would have been better pleading to allege nontenure of as much as the demandant holds ; and, upon it being so found, to plead to the points of the writ.



II.<sup>1</sup>Mort-  
dauncestre.

Stephen de Niugate et Johan et Thomas ces freres porterent lor mortdauncestre vers Richard de C.<sup>2</sup> Stephen et Johane ne suerunt poynt et furent seueres par agard.

*Bacon* par la ou Thomas porte cesti bref et demande un mees et v. acres de terre etc. nous vous dioms qe nous ne sumus tenantz forsque de ij. acres de tere et il mesmes est tenant de une acre de tere com afferant a sa partie Jugement du bref.

*Malm.* vous auetz grante les poyntz de nostre bref en droit de partie et de remenant nous prioms lassise.

*Bacon.* Jeo nay mye grante les poyntz de vostre bref mes ceo dye qe ieo ne puisse <sup>3</sup>les tenementz rendre qe vous demandetz<sup>3</sup> pur ceo qe ieo ne su mye tenant de sa<sup>4</sup> demande qar vous mesmes estes seisi<sup>5</sup> de une acre com afferant a vostre purpartie

SPYGURNEL vous pernetz malement vostre excepcion dalegger noun tenans mes vous dirretz issint qe vous nestis pas pleynement tenant de sa demande pur ceo qil mesmes est tenant de partie et dirrez<sup>6</sup> de quei mes quant vous dites qil mesmes est tenant de ceo qe affiert a sa purpartie entant grantez vous qe son auncestre morust saisi et qil est heir <sup>7</sup>plus prochein<sup>7</sup> etc. et pus le terme et pur ceo venge<sup>8</sup> Lassise.

NOTA.<sup>9</sup>

Nota de mortdancestre porte vers iij. iontement qe tindrent en severalte.

La ou mortdauncestre fu porte vers treis <sup>10</sup>qe disoient<sup>10</sup> qil tindront en severalte e demaunderent jugement du bref lassise vint e dit qe un de treis tient en severalte par quei fut dit qe le bref fut mauois mes si trove eust estre par lassise qe un de eux eust este tenaunt dil entier le bref eust este assez bone : par SPYG.

ANON. v. ANON.<sup>11</sup>

Nota bref de mortdancestre fust porte vers iij. qe tinderent seueralment les ij. vinderent et le teirce ne vint pas pur qi la resummonce fust agarde et les ij. disoyent qil fuerent prist de oier<sup>12</sup> la reconisance de Lassise.

SPYG. Lassise ne purra mie estre prise par parcles qar le bref ne

<sup>1</sup> Text of (II) from  $\gamma\gamma$  collated with  $\zeta$ . <sup>2</sup> B.  $\zeta$ . <sup>3-3</sup> vostre demande rendre  $\zeta$ . <sup>4</sup> vostre  $\zeta$ . <sup>5</sup> tenant  $\zeta$ . <sup>6</sup> from  $\zeta$ ; dire  $\gamma\gamma$ . <sup>7-7</sup> from  $\zeta$ ; etc.  $\gamma\gamma$ . <sup>8</sup> fetes venir  $\zeta$ . <sup>9</sup> Note from  $\alpha$ ,  $\alpha\alpha$ ,  $\beta$ . Text from  $\alpha$  collated with  $\beta$ . Head note from  $\alpha$   $\alpha$  and  $\beta$ .  $\alpha$  omits. <sup>10-10</sup>  $\beta$  omits. <sup>11</sup> Reported by  $\eta$  and  $\theta$ . Text from  $\theta$  collated with  $\eta$ . <sup>12</sup> from  $\eta$ ;  $\theta$  has mere [sic].

## II.

Stephen of Newgate and John and Thomas his brothers brought their mortdancestor against Richard of C. Stephen and John did not prosecute their action and were severed by judgment. Mort-dancestor.

*Bacon.* Whereas Thomas brings this writ and demands a messuage and five acres of land etc. we tell you that we are tenants of two acres of land only, and that he himself is tenant of one acre, which constitutes his share. Judgment of the writ.

*Malmerthorpe.* You have granted the points of our writ as to part, and we pray the assize as to the remainder.

*Bacon.* I have not granted the points of your writ ; but what I say is this, that I cannot render the tenements which you demand because I am not tenant of his demand, for you yourself are tenant of one acre, which was apportioned to you as your share.

SPIGURNEL J. You took your exception unskilfully in alleging nontenure. You should rather have said that you are not fully tenant of his demand, for he himself is tenant of part of it, saying of what ; for when you say that he himself is tenant of so much as constitutes his share, you are thereby granting that his ancestor died seised and that he is the next heir etc. and within the limitation ; and therefore let the assize come.

## NOTE.

Note of a mortdancestor brought against three jointly who held in severalty.

In the case where a mortdancestor was brought against three who said that they held in severalty and demanded judgment of the writ, the assize came and said that one of the three held in severalty. It was thereupon ruled that the writ was bad ; but if the assize had found that one of them was tenant of the whole the writ would have been good. By SPIGURNEL J.

## ANON. v. ANON.

Note that a writ of mortdancestor was brought against three who held in severalty. Two of these came, but the third did not. A re-summons was thereupon awarded ; and the two said that they were ready to hear the recognition of the assize.

SPIGURNEL J. The assize cannot be taken in parcels, for the writ

donne garrant fors a prendre une Assise dont si nous prisoms ore une et un altre iour un auter dont ensuiroit qe nous prendrioms<sup>1</sup> ij. assises par un bref etc. Et iadumeis<sup>2</sup> chescun tenant purra pleder hors de pointz de Assise sil <sup>3</sup>eit matier mon bien<sup>4</sup> [*sic*].

NOTA.<sup>5</sup>

Nota en un mortdauncestre qe nent aresteant qe le tenant alegge qe le demandant resceut de son frere qi assigne il fust le manere de Norton et C. mes pas mesme les tenementz qore sont en demande et mist avant chartre ove clause de garrantie qe ceo temoigna qe le demandant fust resceu al averrement qe son auncestre de qi mort etc. morust seisi etc. e lassise agarde etc.

NOTA.<sup>6</sup>

Nota qe en un mortdauncestre trove fust qe launcestre de qi seisine etc. avoit done mesme les tenementz a sa feme a sa feme [*sic*] demene xl. jours devant les esposailles et fut demande par la corte sil furent affiances al temps de feofment. Les Jurors disoient qe non per qi agard fut qe le heire ne prist riens par son bref sanz ceo qil enquistrent si le don se fit par reson de matrimonie.

LONG v. SHIRLAND.<sup>7</sup>

Assisa venit recognitura si Iohanna de Merwode mater Emme uxoris Thome le Long fuit seisita in dominico suo ut de feodo de xl. acres [*sic*] terre cum pertinentiis in Bradegar die quo obiit et si etc. unde Robertus de Shirland viginti acras terre inde tenet Et Margareta que fuit uxor Iohannis de Fozheleston viginti acras terre inde tenet qui venerunt Et Margareta quoad tenementa predicta unde assisa versus eam arramiata est dicit quod ipsa tenet tenementa illa nomine dotis sue de hereditate predicti Roberti et in forma illa vocat ad warrantizandum ipsum Robertum etc. qui quidem Robertus venit et in forma predicta gratis warrantizat ei concordando etc. et idem Robertus dat dimidium marce pro licencia concordandi Et habuit et ibi profert cyrographum per E. Passele narratorem etc.

<sup>1</sup> prendroms  $\eta$ .  
<sup>6</sup> Note from  $\theta$ .

<sup>2</sup> ialemeins  $\theta$ .

<sup>3-4</sup> est matere  $\eta$ .  
<sup>7</sup> Note from  $\theta$ .

<sup>5</sup> Note from  $\theta$ .



authorises the taking of one assize only ; but if we took one to-day and another another day we should be taking two assizes under one writ etc. And meanwhile each tenant may plead outside the points of the assize, if he has aught material to say.<sup>1</sup>

## NOTE.

Note that, in a mortdancestor, the demandant was received to the averment that his ancestor, upon whose death etc., died seised, notwithstanding that the tenant alleged that the demandant received the manors of Norton and C. from his brother, whose assignee he was, but not the tenements in demand, and that he tendered a charter with a warranty clause in proof ; and the assize was awarded.

## NOTE.

Note that, in a mortdancestor, it was found that the ancestor upon whose seisin etc. had given the tenements in demand to his wife forty days before their marriage ; and the court inquired whether they were betrothed at the time. The jury found that they were not ; and therefore it was adjudged that the heir could take naught by his writ unless it were found by inquest that the gift was made in consideration of marriage.

## LONG v. SHIRLAND.

The assize comes to recognise whether Joan of Marwood, the mother of Emma the wife of Thomas Long, was seised in her own demesne as of fee of forty acres of land with the appurtenances in Bredgar upon the day she died and whether etc. ; of which land Robert of Shirland holds twenty acres, and of which Margaret that was wife of John of Folkestone holds twenty acres. And these came. And as to the aforesaid tenements in respect of which the assize was impanelled against her, Margaret says that she holds these tenements by way of dower of the inheritance of the aforesaid Robert, and calls Robert himself to warrant them to her after that form ; and the said Robert comes and freely warrants after the said form, after coming to terms with her etc. and the said Robert gives half a mark for leave to settle. And he had leave, and he tenders there a cyrograph witnessed by E. Passeley, counter etc.

<sup>1</sup> The *mon bien* of the text must be corrupt, and is untranslatable. It is scarcely possible that it can be a mistake for the ejaculatory *mon dieu* !

HEIGHAM v. BARTELOT.<sup>1</sup>I.<sup>2</sup>

Mortdauncestre de rente ou le tenaunt allegga qil fut tenaunt de la terre et ne poet estre tenaunt de la terre<sup>3</sup> simul et semel.

Johan le fiz Roger de Heigham et J. soun frere porterent le mortdauncestre uers Cecilie la filie Simoun Bartelot de x.s. de rente dount lour pere morust seisi.

*Pass.* Sire Cecilie vous dit qe ele tient les tenemenz dount ceste rente issue et ele ne peut estre tenaunte del demeigne de la rente jugement du bref.

*Bacoun.* Vous este tenaunt dil demeigne et retenour de la rente et prioms lassise mes si vous payastes la rente a asqun autre ceo serreit autre.

*Pass.* Nous tenoms les tenemenz dount ceste rente issue de vous ou bref de custumes et de seruices vous seruereit qest un bref de dreit saunz damages recouerir ou cesti bref de mortdauncestre ne gist pas a recouerir damages.

SPIGURNEL. Il puet elire en ceo caas qe soun auncestre morust seisi et lun bref ne forsclost paas et il prent a celui qe plus vaut pur lui qe bref dael et de cosinage git en ceo cas pur le seigneur mes il ne rescouera forsqe seruices maniables mes par bref de custuma et des seruices auxi bien nient maniables com les maniables et nous auoms veu meintener en temps Sire Johan de Metingham et Sire Rauf de Hengham par quei nous agardoms lassise et fetes et nous le asseleroms.

Et puis lassise juree et J. fut nounsuy etc.

II.<sup>4</sup>

Mordancestre porte par le seignour de x.s. de rente uers son tenant demene etc.

Un Robert porta son bref de Mordancestre uers Angnes qe fut la fille S.<sup>5</sup> Bartelot et demanda x.s. de rente.

*Wescote.* Angnes est tenant de demene dount cete rente dust sourdre et nentendoms pas qe <sup>6</sup>lassise uers ly gise.<sup>6</sup>

<sup>1</sup> Reported by a, γ, δ, ε, ζ, η, and θ. Noted in Fitzherbert's *Abridgement*, Mortdancestor 41. <sup>2</sup> Text of (I) from a. <sup>3</sup> obviously a mistake for rente.

<sup>4</sup> Text of (II) from η collated with θ. <sup>5</sup> Simond θ. <sup>6-6</sup> assise vers Agnes θ.

## HIGHAM v. BARTELOT.

## I.

Mortdancestor for rent, where the tenant alleged that she was tenant of the land and could not be at once and the same time tenant of the rent.<sup>1</sup>

John the son of Roger of Higham and J. his brother brought the mortdancestor against Cecily the daughter of Simon Bartelot in respect of a rent of ten shillings of which their father died seised.

*Passeley.* Sir, Cecily tells you that she holds the tenements from which this rent issues, and says that she cannot be tenant of the demesne and of the rent. Judgment of the writ.

*Bacon.* You are tenant of the demesne and detainer of the rent ; and we pray the assize. But if you paid the rent to some other person the case would be otherwise.

*Passeley.* We hold the tenements from which this rent issues of you ; and a writ of customs and services would serve you, which is a writ of right under which damages are not recoverable,<sup>2</sup> while this writ of mortdancestor is given for the recovery of damages.<sup>3</sup>

SPIGURNEL J. In the circumstances he can make his election, for his ancestor died seised, and the one writ is not exclusive of the other ; and he chooses the writ that is most to his advantage. Writs of both ael and cosinage are open to the lord in similar circumstances, but under them he can recover tangible services only, while under a writ of customs and services he can recover intangible ones as well as tangible ; and we have seen them upheld in the time of Sir John of Metingham and Sir Ralph of Hengham. Wherefore we award the assize ; and make [your objection], and we will seal it.<sup>4</sup>

And then the assize was sworn, and J. was non-suited etc.

## II.

Mortdancestor brought by the lord against his own tenant in respect of a rent of ten shillings.

One Robert brought his writ of mortdancestor against Agnes that was daughter of Simon Bartelot and demanded ten shillings of rent.

*Westcote.* Agnes is tenant of the demesne from which this rent issues, and we submit that the assize does not lie against her.

<sup>1</sup> See note on opposite page.

<sup>2-3</sup> The text says the exact opposite of this. The negative must have slipped in through some mistake.

<sup>4</sup> For the statutory procedure when the Court refused to receive an exception see Statute of Westminster II. cap. xxxi.



*Bacoun.* Angnes tent de nous memes lez tenemenz mis en vewe dont la rente etc. par lez services de x.s. et detent la rente et issi tenant de nostre demande et prioms lassise.

*Westcote.* et nous jugement depuis<sup>1</sup> qe vous auet conu qe <sup>2</sup>lez tenemenz dont la rente etc. sont tenuz<sup>3</sup> de vous en qel cas vostre recouerer vous est done par destresse ou par bref de custumes et de service jugement de vostre conisance.

*SPIGURNEL.* assez souent auz<sup>4</sup> vew le mordancestre et bref de ael et altres brefs de possession meintenuz en tel cas.

*Pass.* si ceus<sup>5</sup> brefs de possession seient meintenuz entre seignour et tenant bref de custumes et de services seruira de nient.

<sup>6</sup>*SPIG.* per cesti bref home ne pust autre chose recouerir fors services maniables et bref de Custumes et de services gist de services maniables et nient maniables pur qi list au Seignur de user lun ou lautre.

*Pass.*<sup>7</sup> et de altre part si tiel bref seit meintenuz il recouera damages ou il ne recouereit en bref de custumes et de services forsqe arrerages pur quei etc. estre ceo il moy tout moun desclamer qi est done a tenant qi esteint lez services a tous iours le qel desclamer ne git pas en bref de Mordancestre et nient aresteans lor resons auantdit

*SPIGURNEL* agarde le bref bon.

*Fris. Malm.* et *Pass.* in contraria opinione<sup>8</sup> existentibus.

### III.<sup>9</sup>

<sup>10</sup>Un Jon porta bref de mort dauncestre vers un Adam et pria qe reconu feust etc. si Richard son pierre fust seisi de x.s.<sup>11</sup> de rente en son demene com de fee<sup>12</sup> le jour etc.<sup>13</sup>

*Westcote* Adam vous dit qil est tenant de la terre de qele il dit ceste rente estre issaunt et la tient de Jon mesme. Jugement si cesti bref gise entre seignur et tenant.

<sup>1</sup> delhoure *θ*. <sup>2-3</sup> nous tenoms les tenementz dount la Rente etc. *θ*. <sup>4</sup> avoms *θ*. <sup>5</sup> tiels *θ*. <sup>6-7</sup> *from θ; η omits.* <sup>8</sup> *from θ; η has optulerunt se.*

<sup>9</sup> Text of (III) from *γ* collated with *δ*, *ε* and *ζ*. <sup>10-13</sup> un J. porta une assise de Mordancestre de la mort son per [*sic*] de xx.s. de rente etc. *ζ*.

<sup>11</sup> xx *ζ*. <sup>12-13</sup> (p. 37) *δ*, collated with *ζ*, reads as follows:—et issint <sup>a</sup>est il<sup>a</sup> tenant de sa demande. Jugement du bref etc.

*Bacoun.* vous estes tenant de la terre et resceuiour de la rente et demandoms jugement depus qe vous ne poez dire <sup>b</sup>qe autre soit tenant de nostre demande si nostre bref ne seit assez bon.

*SPIGURNEL* <sup>a</sup> *Westcote.* <sup>c</sup> dites autre chose.

*Westcote.* nous vous dioms qil tient ceux terres dount ceste rente dust estre surdaunt <sup>d</sup>et demandoms<sup>d</sup> jugement si entre seignour et tenant bien bref y gise.

*SPIGURNEL.* cest bref gist moult bien et Ael et Cosinage.

<sup>a-a</sup> nest il mie *ζ*. <sup>b</sup> *ζ adds* qe vous fecez a altre la issi qe vous ne poez dire.

<sup>c-c</sup> *ζ omits.* <sup>d-d</sup> del avant dit Johan *ζ*.

*Bacon.* Agnes holds of us the tenements put in view, the rent of which etc. by the service of ten shillings, and she detains the rent, and so is tenant of our demand, and we pray the assize.

*Westcote.* And we pray judgment since you have admitted that the tenements of which the rent etc. are holden of you ; for in such case your recovery is given to you by distress or by writ of customs and services. Judgment of your admission.

SPIGURNEL J. We have seen mortdancestor and writ of ael and other possessory writs upheld often enough in similar circumstances.

*Passeley.* If these possessory writs are to be maintained between lord and tenant, then the writ of customs and services is purposeless.

SPIGURNEL J. Under the present writ a demandant can recover tangible services only, while under a writ of customs and services he can recover both tangible and intangible services, and the lord may choose which he will.

*Passeley.* On the other hand, if this writ be upheld, the demandant will recover damages in circumstances where under a writ of customs and services he would recover arrears only ; wherefore etc. ; and, further than this, he deprives me of my right to disclaim, a right which is given to the tenant and extinguishes services every day, for that right to disclaim does not lie under a writ of mortdancestor.—But, notwithstanding the aforesaid arguments—

SPIGURNEL J. ruled that the writ was good.

*Friskenev, Malmerthorpe and Passeley* were of the opposite opinion.

### III.

One John brought a writ of mortdancestor against one Adam and prayed that it should be recognised etc. that Richard his father was seised of a rental of ten shillings in his own demesne as of fee the day etc.

*Westcote.* Adam tells you that he is tenant of the land from which John says that this rent issues, and that he holds it of John himself. Judgment whether this writ lies between lord and tenant.

<sup>1</sup>SPIGURNEL cest y bref gist mout bien e bref de aiel e de cosynage.<sup>2</sup>

*Toudeby*<sup>3</sup> jeo ay veu bref dael<sup>4</sup> meyntenu entre seigneur et tenant.

*Pass.* Sire il semble qe ceo bref ne gist point entre seigneur et tenant qar en bref de custumes et des services homme<sup>5</sup> peut desclamer et par taunt serreient les services esteintz mes en cesti bref nient par qey etc.<sup>6</sup>

SPIGURNEL par bref de custumes et de services peut homme demander services nient manyables<sup>7</sup> cum homage et autres tiels services mes par<sup>8</sup> cesti bref fors qe services qe chesent en demene.

*Pas* il serroit duresse pur le tenant si cesti bref soit meyntenu qar en ceo bref le seigneur recouvrera damages et si ne fera il mie en bref de custumes et services par qey etc.

SPIGURNEL le bref de custumes et de services fust donee a seigneur pur son avauntage et si cesti<sup>9</sup> soit plus pur son avauntage il serra plus tost meyntenu pur le seigneur. Estre ceo nous le avoms<sup>10</sup> veu meyntenu en temps J. de Metingham <sup>11</sup>R. de Hingham<sup>11</sup> etc. sed—

*Frisk et Malm* <sup>12</sup>non concordaverunt.<sup>12</sup>

<sup>13</sup>*Westcote* fust chace a respondre et dist qil fust prest doyer la reconisance. Ideo etc.

#### ANON. v. ANON.<sup>14</sup>

Mortdauncestre ou le tenaunt fut seisi puis la mort soun auncestre dit outre qe le demandaunt auoit un frere eigne et muliere et dit outre qil mesmes auoit relese en sa seisine et a cel fut chace a respondre. Issi lassise tourne en nature denqueste.

En un assise de mortdauncestre :

*Malm.* a tort porte il cest assise qil mesmes fut seisi puis la mort de celui de qy mort il porte cest assise jugement du bref et si troue soit qe noun vous dioms qil ad un frere eigne de lui et moelliure et en pleine vie jugement etc. et si troue soit [qe noun] outre vous dioms qil relesea et quiteclama a nous en nostre seisine.

SPIGURNEL. ceo est pur tut et a ceo couient il qe vous responez.

*Wescote.* Jeo ay vew bref dael estre meintenu entre seigneur et tenant car de coustumes et de services pout le tenant desclamer et par taunt serrunt les services esteintz mes en cesti bref ment pur quei etc.

<sup>1-2</sup> from *ε*. <sup>3</sup> *Malm ε*. <sup>4</sup> *ε omits*. <sup>5</sup> le tenant ζ. <sup>6</sup> See note 12, p. 36. <sup>7</sup> maniabels ζ. <sup>8</sup> en δ. <sup>9</sup> δ adds bref. <sup>10</sup> adds souent. <sup>11-11</sup> δ omits; Sire Rauf de Henham ζ. <sup>12-12</sup> Ne assentirent pas δ; ne se ascentirent point ζ. <sup>13</sup> from here to end δ, collated with ζ, reads as follows: SPIGURNEL. Nous agardoms qe le bref y gise<sup>a</sup> et si vous entendez qe ce ne seit my ley mettez le en bille et ieo lasseleroy.<sup>b</sup> et stetit bref. <sup>c</sup>*Mal.* nous sumes prest de oyer la reconisance.<sup>c</sup>

<sup>14</sup> Reported by a only. Noted in Fitzherbert's *Abridgement*, Mordancestor 42

<sup>a</sup> ζ adds asez bien.

<sup>b</sup> lenseleray ζ.

<sup>c-c</sup> Par quay lassise vint ζ.



SPIGURNEL J. This writ will lie very well, as would writs of ael and cosinage.

*Toudeby.* I have seen a writ of ael maintained between lord and tenant.

*Passeley.* Sir, I submit that this writ does not lie between lord and tenant, for in a writ of customs and services a man may disclaim, and so the services would be extinguished, but in this writ he cannot; wherefore etc.

SPIGURNEL J. By a writ of customs and services a man may demand intangible services such as homage and other services, but by this writ only such services as fall in demesne.

*Passeley.* It would be a hardship upon the tenant if this writ be maintained, for by this writ the lord can recover damages and he could not in a writ of customs and services; wherefore etc.

SPIGURNEL J. The writ of customs and services was given for the advantage of the lord; and if this writ should be more to his advantage it will be the more readily maintained on his behalf. And, more than this, we have seen it maintained before J. of Metingham, R. of Hengham etc.

But *Friskenev* and *Malmerthorpe* dissented.

*Westcote* was compelled to answer and he said that he was ready to hear the recognition. Therefore etc.

#### ANON. v. ANON.

Mortdancestor where the tenant says that he was seised upon the death of his ancestor, and then pleads over that the demandant has an elder legitimate brother, and further pleads over that the demandant had himself released to him during his seisin, which plea the demandant had perforce to answer. And so the assize assumed the nature of an inquest.

In an assize of mortdancestor—

*Malmerthorpe.* He has brought this assize wrongly, for the tenant himself was seised upon the death of him upon whose death this assize is brought. Judgment of the writ. But if this be found against us, then we answer over that the demandant has a brother older than himself, legitimate and alive. Judgment etc. And if this be found against us, we plead over that he released and quitclaimed to us while we were seised.

SPIGURNEL J. That is a conclusive plea, and you must answer it.

*Asseh.* de deinz age au temps qe le fet fut fet prest etc.

*Malm.* de plein age prest etc.

Lassise vint et SPIGURNEL les chargea soulement si le fet fut fet de plein age ou de deinz age kar tut plederount il primes al point de lassise puis plederent a barrer la partie daccioun et issi tourne lassise hors de sa nature par quei homme ne les deit mie charge de ceo qe chief en assise et de ceo qe chief hors dassise a une foiz charge Juratores dicunt qe de plein age etc.

# ANON. v. ANON.<sup>1</sup>

## I.<sup>2</sup>

Un A. porta une assise de mortdancestre vers une Maude de la mort son pere de un mes et xx. acres de terre en C.

*Loveday.* Cristine nostre mere morust seisi de ceux tenementz en son demene com de fee issint qe apres la mort mesme cest C. ces tenementz ensemblement ou autres tenementz descendirent a Cecil et a Maud vers qy le bref est porte issint etc. Maud tenant en purpartie oveske Cecil sa soer sanz qi el ne put respondre et prie eide de li.

*Stanor* si nous grantoms le eyde en ceo cas la ou vous ditez qe C. etc. nous abaterom nostre bref demeine qe si nous grantisom qe Cristien morust seisi com de fee nostre bref fut maveis.

*Ingham* grant dures seroit si Maud respondroit sanz eide qar issint perderoyt el sanz eyde de ces parceners.

*Westcote* nous vous diom qe J. de qi mort etc. avoit espose Cristien issint qe apres la mort Johan Cristiene fut dowe de ceux tenementz et prist altre baron qe engendra Maud Cecil pus morust Cristiene M. et C. entrerent issint qe la ou il dient qe Cristiene morust seisi en son demene etc. el navoit qe frank tenement prest etc.

*Cant.* il ad abatu son bref demeyne qe la ou il dist qe Cristiene tent en noun de dower si un estrange entre apres la mort le tenant en dower si ad celi a qi la revercioun son recoverir par bref de Intrucioun jugement du bref.

*Les Justicez* ne volerent ren alower ceo response.

*Inham.* si vous veiez qe nous pom estre resceu a tel averment a dire qe Cristiene morust seisi en son demeyne com de fee sanz nostre parcener nous le voloms averer.

<sup>1</sup> Reported by ζ, η and θ.

<sup>2</sup> Text of (I) from ζ.

*Assheley.* He was within age at the time the deed was made. Ready etc.

*Malmerthorpe.* Of full age. Ready etc.

The assize came, and SPIGURNEL J., charged them solely upon the question of whether the demandant made the deed when he was of full age or while he was under age, although the tenant had first pleaded to the point of the assize, and had then pleaded in bar of the action ; and so the assize lost its natural characteristic, which is that it should not be charged as to matters that fall within the assize and matters that do not fall within it at the same time. The jurors say that he was of full age etc.

### ANON. v. ANON.

#### I.

One A. brought an assize of mortdancesthor upon the death of his father against a certain Maud in respect of a messuage and twenty acres of land in C.

*Loveday.* Christiana our mother died seised of these tenements in her own demesne as of fee, so that, after the death of this same C., these same tenements, together with others, descended to Cecily and to Maud, against whom this writ is brought. Maud is consequently tenant in purparty with her sister Cecily, without whom she cannot answer ; and she prays aid of her.

*Stonore.* If we were to grant this aid in these circumstances where you tell us that C. etc., we should abate our own writ, for if we should admit that Christiana died seised as of fee our writ would be bad.

*Ingham.* It would be a great hardship for Maud if she should have to answer without aid ; for, in that case, she might lose without getting compensation from her parceners.

*Westcote.* We tell you that J., upon whose death etc., married Christiana, so that after John's death Christiana held these tenements by way of dower. Afterwards she took another husband that begat Maud and Cecily. Then Christiana died, and Maud and Cecily entered. It follows consequently that Christiana had only a freehold, instead of dying, as they say, seised in her own demesne. Ready etc.

*Cambridge.* When he said that Christiana held by way of dower he abated his own writ ; for, if a stranger enter after the death of the tenant in dower, he to whom the reversion belongs has his recovery by a writ of intrusion. Judgment of the writ.

THE JUSTICES would not allow this answer.

*Ingham.* If you be of opinion that we may be received to say by averment, without our parcener, that Christiana died seised in her own demesne as of fee, we will so aver.



SPIGURNEL pur ceo qe mischef serroyt qe M. respondroit sanz C. sa parcener qar si el perdit el navereyt ren de sa parcener par quay la courte agarde a Maud eyde.

Après cel eyde grante si vint Cecil ovesqe Malde.

*Inham* la ou B. [*sic*] porte ceste assise de mortdancestre de la mort J. son pier el diseit qe après la mort J. de qi etc. si entre un Thomas com fitz et heir et ceo etc. un bref de possessioun qy etc. jugement etc.

*Toudeby* si Thomas entra auxi com jeo ne grante point T. assigna ceux tenementz en noun de dower ceo ne abat poin nostre bref qe ne fet autre chose qe nestut de luy qe si la femme eust ceux tenementz recoveri par jugement par son bref de dower ceo ne abatera mie nostre bref.

SPIGURNEL vous ne pursues point vostre primer excepcioun enz retornez a un autre par quay veez a quel excepcioun vos veliez tener.

*Inham* wayva totes les autres excepciouns et dit qe Thomas entra après la mort J. etc. et assigna les tenementz en non de dower a Cristiene et pus en la C. relessa et quiteclama jugement si vous poez ren demander et mistrerent avant fet qe ceo temoyna.

*Toudeby* nent le fet Thomas prest etc.

Et alii e contra etc.

## II.<sup>1</sup>

Mordancestre excepcion de dreyn seisi.

Johan le fiz Richard porta son Mordancestre uers Alice la fille Cristine etc.<sup>2</sup> et demanda certain tenementz etc.<sup>3</sup>

*Cant.* après la mort Alice<sup>4</sup> de qi mort etc. entra un Thomas com fiz et heir et seisi fut et cet<sup>5</sup> un bref de possession qe veit estre porte etc. jugement etc.

*Toudebi.* vostre excepcion ne est pas pleine si vous ne diet qil mourust seisi ou qil fut seisi et aliena et ceo ne fetes jugement etc.

*Cant.* Ieo pos qe Thomas qi seisine nous allegoms vst este disseisi<sup>6</sup> ceo serreit excepcion<sup>7</sup> assi bon adire ausicom nous auoms ore dit.

*Toudebi.* vous dites mal qar en tel cas il vous coueneit conustre qil fut disseisi et par tant acceptastes sa saisine etc.

*Cant.* Thomas entra com fiz et heir et assigna doweré a Cristine de droit plus haut leqel assignment nest pur acconte par ley la saisine

<sup>1</sup> Text of (II) from  $\eta$  collated with  $\theta$ .

<sup>2-3</sup> added from  $\theta$ .

<sup>4</sup> Richard  $\theta$ .

<sup>5</sup> ceo est  $\theta$ .

<sup>6-7</sup> nostre excepcion serroit  $\theta$ .

SPIGURNEL J. Seeing that it would be a hardship for Maud if she were made to answer without Cecily, her parcener, for, then, if she lost, she could get naught from her parcener, the Court rules that she may have aid.

After aid was granted Cecily came together with Maud.

*Ingham.* Whereas B. brings this assize of mortdancestor upon the death of J. his father, Maud says that after the death of J., upon whose death etc., one Thomas entered as son and heir; and this is a possessory writ etc. judgment etc.

*Toudeby.* If Thomas did so enter—which I do not admit—he assigned these tenements by way of dower; an act which no more abates our writ than any other act to which he was bound would do; for if the wife had recovered these tenements by judgment under a writ of dower that fact would not abate our writ.

SPIGURNEL J. You are not speaking to your first exception but are raising another; wherefore make up your mind which exception you want to abide by.

*Ingham* waived all other exceptions and said that Thomas entered after the death of J. etc. and assigned the tenements to Christiana by way of dower, and afterwards, during C.'s seisin, released and quit-claimed. Judgment whether you can demand aught—and he tendered a deed in proof.

*Toudeby.* Not Thomas's deed. Ready etc.

And the other side joined issue.

## II.

Mortdancestor: exception of latest seised.

John the son of Richard brought his mortdancestor against Alice the daughter of Christiana etc. and demanded certain tenements etc.

*Cambridge.* After the death of Alice, upon whose death etc., one Thomas entered as son and heir and was seised; and this is a possessory writ which must be brought etc. Judgment etc.

*Toudeby.* Your exception is not complete unless you say that he died seised or that he was seised and alienated; and you have not said that. Judgment etc.

*Cambridge.* I put the case that Thomas, whose seisin we allege, had been disseised; that exception would be as good as the exception which we have just taken.

*Toudeby.* There you are wrong; for in such a case you would have to admit that he was disseised, and to that extent you would be granting John's seisin etc.

*Cambridge.* Thomas entered as son and heir, and assigned dower to Christiana in right of a higher title; and such an assignment does

Thomas pur ceo gele est dowe de dowement son baron et par consequens sa seisine nule jugement de vostre conisance.<sup>1</sup>

*Cant.* nous auoms dit qe Thomas assigna dowere a Cristine de quel assignement vous poet auer vostre bref de entrusion jugement de bref.

*Toudebi.* tot portames nostre bref de intrucion il nous coueneit<sup>2</sup> conter de la seisine Richard nostre pere et ne mie de la seisine Thomas et portant ensut<sup>3</sup> qe Thomas<sup>4</sup> fut pas seisi et<sup>5</sup> estre ceo ieo recoueraï damages a cete bref de Mordancestre et si ne fray<sup>6</sup> point a bref de entrusion<sup>7</sup> et estre ceo si Thomas meme fut en vie et portast son bref de entrucion il couendreit<sup>8</sup> conter de la seisine Richard et ne pas de sa seisine etc. et estre ceo si le bref de entrucion vst este porte vers Cristine tant com ele<sup>9</sup> fut en vie le bref diroit en les qeus ele nad entre sinon par Richard de qi dowement etc. sanz fere mencion en les degres de Thomas qi assigna a ly meme les tenemenz en dower qar en tel cas assignement ne<sup>10</sup> fet par degres et par tant ensut qe la seisine est nule.

*Cant.* si ele vst recouere dowere en court etc. par jugement etc. le jugement vst defet<sup>11</sup> la seisine Thomas mes dowere la fut assigne hors de court pur qei etc.

*Toudebi.* seit ceo en court ou hors de court si ele fut dowe ceo deit auer regard a lestat son baron qar sil demore<sup>12</sup> seisi la feme recouera damages de tens de la mort son baron iesques a tens de son recouerir et par tant ensut qe lassignement Thomas ne deit estre acconte pur seisine jugement etc.

Et puis *Cant.* weyua la excepcion de dreyn seisine et dit qe Thomas assigna dowere a Cristine et puis releassa et quitclama en sa seisine jugement si assise etc.

*Toudebi.* Thomas fut denz age a tens de la confeccion prest etc.

#### ANON. v. ANON.<sup>13</sup>

Un O. porta un Mortdancestre et pria qe reconu fut par lassise etc. Le tenant traversa les poinz de son bref et dit qe son auncestre ne morust pas seisi.

Lassise dit qe Johan dona les tenementz a Alice qe ore est tenant a li et a ses heirs et la fesoit la liverie de seisine et sen ala hors du pays

<sup>1</sup> Between this and the immediately following speech *θ* attributes yet another one to *Cambridge*; the text of which is clearly corrupt:—*Cant.* nous auoms dit qe Thomas assigna dower son baron et par consequence sa seisine nule de bref conu-sance. <sup>2</sup> couendreit *θ*. <sup>3</sup> eussent *θ*. <sup>4</sup> *θ* adds ne. <sup>5</sup> *θ* omits. <sup>6</sup> *θ* adds ieo. <sup>7</sup> *θ* adds qe de iure. <sup>8</sup> *θ* adds par ley. <sup>9</sup> il *θ*. <sup>10</sup> supplied from *θ*. <sup>11</sup> desert *θ*. <sup>12</sup> deuie *θ*. <sup>13</sup> Reported by *δ* and *ζ* in almost identical terms. Text from *ζ*.



not, in the eyes of the law, infer Thomas's seisin, for she is dowered by the endowment of her husband; and consequently Thomas had no seisin. Judgment of your admission.<sup>1</sup>

*Cambridge.* We have said that Thomas assigned dower to Christiana, and you might have had your writ of intrusion based upon that assignment. Judgment of the writ.

*Toudeby.* Even if we had brought a writ of intrusion we should have had to count of the seisin of Richard our father and not of the seisin of Thomas, and thereby to deny Thomas's seisin. And, besides that, under this writ of mortdancestor I shall recover damages which I could not do under a writ of intrusion. And yet again, even if Thomas were alive and brought his writ of intrusion it would still be necessary to count of Richard's seisin and not of Thomas's etc. And, further than this, if the writ of intrusion had been brought against Christiana during her life the writ would have said 'into which she had no entry save by Richard by whose endowment etc.' without mentioning the degree of relationship of Thomas who assigned the tenements to her by way of dower; for in such circumstances the assignment is not based on degrees, and to that extent it would follow that Thomas's seisin counted for naught.

*Cambridge.* If she had recovered dower in court etc. by judgment etc. Thomas's seisin would have been annulled by the fact of such judgment; but dower was assigned to her out of court, and therefore etc.

*Toudeby.* Whether she were endowed in court or out of it the endowment is a consequence of her husband's estate. If the husband died seised the wife will recover damages from the time of his death until the time of her recovery; and therefrom it follows that Thomas's assignment ought not to be taken as proving his seisin. Judgment etc.

And then *Cambridge* waived the exception of latest seised and said that Thomas assigned dower to Christiana and then released and quitclaimed during her seisin. Judgment whether assize etc.

*Toudeby.* Thomas was within age at the time of the execution. Ready etc.

#### ANON. v. ANON.

One O. brought a mortdancestor and prayed that it should be recognised by the assize etc. The tenant traversed the points of his writ and said that his ancestor did not die seised.

The assize said that John gave the tenements to Alice, the present tenant, to her and her heirs, and delivered seisin to her and then left

<sup>1</sup> See note on opposite page.

et revient en pays et espousa mesme cele Alice et vous dioms qil ne morust pas seisi en son demene com de fee par quai agarde fut qil ne prist rien par son bref etc.

ANON. v. ANON.<sup>1</sup>

Assise de  
Mort-  
dauncestre.

En un assise de mortdauncestre<sup>2</sup> fut le verdit tiel <sup>3</sup>il disoint<sup>3</sup> qe entre launcestre le demandant de qi<sup>4</sup> cesti bref est porte et le tenant fut une pourparlance qil ly dust auer feffe des tenemenz qe sunt en demande et com il ieust malads<sup>5</sup> en son lit vint cesti qore est tenant et ly enporta hors de tenemenz mes<sup>6</sup> encontre sa volunte et fut hors un iour et pus morust.

SPIGURNEL. Assez morust il seisi et agardoms qil recouera etc. secus forte fuisset si nul parlaunce eust estee de feffement issint qil nust my entre par title eynz par disseisine en clamant fee et droit illoques couendreit par aenture auer porte son bref dentre foundu sur disseisine.

CAPEDOT v. BOUNGTONE.<sup>7</sup>

## I.

Mort-  
dancestre.

Thomas Capedot et Nicholas son frere porterent le mortdancestre vers Nicholas de Bountone<sup>8</sup> et demanda certain tenementz en la vile de Cantebirs.

*Passeleu.* assise ne deit estre qar nous vous dioms qe les tenementz en Cantebirs sont divisables et des tenementz devisables nul Mortdancestre est pledee Jugement etc.

*Ingham.* Ne nous deuetz oster de cesti bref si vous ne dietz plus qe les tenementz sont <sup>9</sup>divisables et <sup>9</sup>divises <sup>10</sup>prest dauerer<sup>10</sup> par assise qe nostre auncestre morust saisi en son demene <sup>9</sup>cum de fee.<sup>9</sup>

*Passeleu.* Jeo nay mester a dire qe les tenementz sunt diuisables qar ceo apent al court chretiene <sup>11</sup>ou a<sup>11</sup> proue du testament mes nous vous dioms qe lez tenementz deynz le Cyte de Cantebirs sunt diuisables pur quei nul mortdancestre git ne unges mortdancestre fut pledee <sup>12</sup>en la ville<sup>12</sup> forsque la freche force et bref de droit.

*Ingham* si vous ne pussetz dire qe unges nul mordancestre ne fut etc. nous voloms auerer etc. et tut soyent lez tenementz divisables sy vous ne pussetz dire qil ne sunt diuises neo moy osteretz mye de de cesti

<sup>1</sup> Reported by δ and ζ. Text from δ collated with ζ. <sup>2</sup> ζ adds porte de la seisine son auncestre. <sup>3-3</sup> ζ omits. <sup>4</sup> ζ adds mort. <sup>5</sup> mortel malades ζ.

<sup>6</sup> ζ omits. <sup>7</sup> Reported by γγ, δ, ζ, and κ. Text of (I) from γγ collated with κ. <sup>8</sup> Banynton κ. <sup>9-9</sup> κ omits. <sup>10-10</sup> from κ; γγ has pus etc.

<sup>11-11</sup> en κ.

<sup>12-12</sup> from κ.

the country. He afterwards returned and married this same Alice, and we tell you that he did not die seised in his own demesne as of fee. Judgment was thereupon given that the demandant should take naught by his writ etc.

## ANON. v. ANON.

By the verdict in an assize of mortdancestor it was found that there was a verbal agreement between the ancestor of the demandant upon whose death this writ was brought and the tenant for the enfeofment of the tenant of the tenements in demand; and while the ancestor was sick in bed the present tenant came and ejected him against his will from the tenements, and he was out of them for a day and then died.

Assize of  
mort-  
dancestor.

SPIGURNEL J. He died sufficiently seised, and we give judgment that the demandant recover etc. <sup>1</sup>The result might well have been different if there had been no agreement for feoffment, for in that case the tenant would not have entered upon a plea of title claiming fee and right, but by disseisin; in which case the demandant would probably have had to proceed by way of a writ of entry *sur disseisine*.<sup>2</sup>

## CAPEDOT v. BAYNTON.

Thomas Capedot and Nicholas his brother brought a writ of mortdancestor against Nicholas of Baynton and demanded certain tenements in the vill of Canterbury.

Mort-  
dancestor.

*Passeley*. You ought not to have an assize for we tell you that the tenements in Canterbury are devisable, and writ of mortdancestor does not lie in respect of devisable tenements. Judgment etc.

*Ingham*. You ought not to oust us from this writ unless you say further that the tenements are devisable and were devised. Ready to aver by assize that our ancestor died seised in his own demesne as of fee.

*Passeley*. It is only incumbent upon me to say that the tenements are devisable. The other is for Court Christian, where they have proof of the testament. But we tell you that tenements within the city of Canterbury are devisable, and therefore no mortdancestor lies, nor was mortdancestor ever pleaded in the vill, but fresh force<sup>3</sup> and writ of right only.

*Ingham*. Unless you can say that no mortdancestor has ever etc. we will aver etc.; and, though the tenements be devisable, yet if you cannot say that they have not been devised you will not oust me from

<sup>1-2</sup> It is not clear whether this forms the serjeants.  
part of the judgment or is a note by  
the reporter embodying the opinion of

<sup>3</sup> See *Introduction*, pp. xxxvi-xl.



bref qar pount ester ensemble qe le tenementz sunt diuisables et nyent diuises.

SPYGURNEL conusetz vous qe les tenementz sunt diuisables.

*Ingham* ieo nay mye mester a conustre.

SPIGURNEL demanda de *Passeleu*<sup>1</sup> sil allege auxi bien des tenementz qe furent de purchas qe de tenementz qi luy furent descendu par succession de heritage.

*Passeleu* dit oyl.

SPIGURNEL si lez tenementz sunt diuisables le mortdancestre ne git mye et vous dirray pur quei qar en tenementz diuisibles<sup>2</sup> le demandant<sup>2</sup> put auer lez poyntz de son bref qe son auncestre morust seisi en son demene cum de fee<sup>3</sup> pur ceo qe les tenementz sunt diuisables lancestre morust saisi<sup>3</sup> qar<sup>4</sup> lez tenementz ne pount estre diuises<sup>4</sup> iesques apres le deces launcestre et qe<sup>5</sup> morust pus le terme et qe lautre soyt plus prochein heir et tut<sup>6</sup> eit tutz ceuls poyntz le recouer ne git pas encountre le devis pur quei le mortdancestre ne gist pas et pur ceo conisset si lez tenementz seyent diuisables ou ne mye.

et les autres ne pount dedire pur quei fut agarde qil prist rien etc.<sup>6</sup>

## II.<sup>7</sup>

Mort-  
dancestre.

Un bref<sup>8</sup> de mortdancestre<sup>8</sup> fut porte des tenemenz en la citee de Canterborie.

*Pass.* Jugement du bref qar les tenemenz de C. sunt devisables ou nul mortdauncestre ne gist.

Tenemenz  
devisable.

*Ingham.* de sicom vous dites qe les tenemenz de C. sunt devisables, et ne dites pas qe les tenemenz en demande sunt deusez, jugement si le bref ne ygise.

SPIGURNEL. de tenemenz qe sunt devisables tut ne seient pas deusez vous nauerez iammes le mortdauncestre mes aueretz le fresche force qar si le mortdauncestre girreit<sup>9</sup> ou tenementz sunt devisables il girreit<sup>9</sup> naturellement<sup>10</sup> en tenemenz qe<sup>10</sup> sunt deusez qe la pout homme auer le pointz de son bref qar cesti qe deusa il done seisine en son demene com de fee pur quei de puis qil ne girreit pas en ceo cas ne en nul cas ou tenemenz sunt deusez<sup>11</sup> mez en ascun ville purchace est devisable et nemy heritage<sup>12</sup> en ascun lieu<sup>13</sup> lun et lautre.

*Pass.* en ceste ville heritage et purchace sunt devisables, prest etc.

et la partie ne poeit dedire pur quei fut agarde<sup>14</sup> qil ne prist rienz par son bref<sup>15</sup> sed sit in misericordia etc.<sup>15</sup>

<sup>1</sup> *Toud* κ. <sup>2-2</sup> quey qyl κ. <sup>3-3</sup> The scribe seems to have confused his copy here. <sup>4-4</sup> le deuis ne puet estre κ. <sup>5</sup> *from* κ; sil γγ. <sup>6-6</sup> tut devie le auncestre seisi recouer ne gist pas encontre le deus pur quey le mortdancestre [sic] γγ. <sup>7</sup> Text of (II) from δ collated with ζ. <sup>8-8</sup> *from* ζ. <sup>9-9</sup> *from* ζ. <sup>10-10</sup> la ou tenementz ζ. <sup>11</sup> devisables ζ. <sup>12</sup> ζ adds et. <sup>13</sup> vile ζ. <sup>14</sup> ζ adds par SPIGURNEL. <sup>15-15</sup> *from* ζ.

this writ, for it may be that the tenements are devisable, and yet that they have not been devised.

SPIGURNEL J. Do you admit that the tenements are devisable?  
*Ingham.* It is not incumbent upon me to admit it.

SPIGURNEL J. asked *Passeley* whether he made the allegation as well of tenements held by purchase as of tenements descended by succession of inheritance.

*Passeley.* Yes.

SPIGURNEL J. If the tenements be devisable the mortdancestor does not lie, and I will tell you why. In respect of devisable tenements the demandant may aver the points of his writ, that his ancestor died seised in his own demesne as of fee,<sup>1</sup> for the tenements cannot be devised until after the death of the ancestor; that he died after the term, and that another is next heir; yet, though he have all the points, he cannot recover against the devisee; wherefore the mortdancestor does not lie. And therefore you must allow that the tenements were devisable or deny it.

And they could not deny it; wherefore it was adjudged that he took naught etc.

## II.

A writ of mortdancestor was brought in respect of tenements in the city of Canterbury. Mortdancestor.

*Passeley.* Judgment of the writ, for the tenements in Canterbury are devisable, and no mortdancestor lies in respect of them.

*Ingham.* Since you say that the tenements in Canterbury are devisable and do not say that the tenements in demand have been devised, judgment whether the writ does not lie. Devisable tenements.

SPIGURNEL J. You will never get the mortdancestor of tenements that are devisable even though no devise has been made, but you will have the fresh force; for if the mortdancestor lay in respect of tenements that are devisable it would consequently lie where they have been devised, for in that case one might aver the points of his writ; but here the devisor gave seisin out of his own demesne as of fee, consequently the writ would not lie here nor in any case where the tenements are devisable. In some vills land held by purchase is devisable, and heritage is not; while elsewhere both the one and the other are.

*Passeley.* In this vill both heritage and purchase are devisable. Ready etc.

And the demandant could not deny this, wherefore judgment was given that he take naught by his writ but be in mercy etc.

<sup>1</sup> See note 3 on the opposite page.

NOTA.<sup>1</sup>

<sup>2</sup> Ou tenementz sount divisables le mortdauncestre ne gist point.

NOTA.<sup>3</sup>

Nota per SPIGURNEL qe des tenemenz devisables in Cantuarie ne par successioun ne par purchas le mortdancestour ne gist point <sup>4</sup>ut inter Nicholaum Kydepot etc.<sup>4</sup>

HELLIS v. SANDWYTH.<sup>5</sup>

Mort-  
dancestre.

Johan le fitz Johan ate hulle <sup>6</sup>et Robert sun frere<sup>6</sup> porterent le Mortdancestre vers Thomas le fitz Thomas de Sandwyth qi vynt et dit qil ne clama rien en lez tenementz si noun cum Gardeyn tantqe al <sup>7</sup>age del enfant<sup>7</sup> et dit qe Johan ate Hulle pere les enfantz tyent mesme les tenementz de Robert Erceuesqe de Cantebirs et morut pur quei leuesqe auoit la garde de lenfantz et auer deit<sup>8</sup> de touz ces tenantz solom les usages de gauelkende e pus vynt un Robert uncle Johan<sup>9</sup> de part la mere et fit fyn pur la Garde tauntqe a age etc. le qel Robert cele Garde lessa a Johan malemeyns et Johan malemeyns lessa a nous issi navoms rien si noun Garde iugement.

SPIGURNEL veingne lassise.

*Toudebi* vous auetz dit qe cest en gauelkende et les tenementz nyent tenuz par service de chiualer et de comune ley home ne deit auer Garde des tenementz qi sount tenuz en sokage pur que etc.

*Pass.* solom usage de Gauelkende le Erceuesqe deit auer le norture de toutz les enfantz etc. qar lor auncestre tyndrent de luy en chief et ad eu touz iours et le Roy ad resceu les profites de tiel garde en <sup>10</sup>tenps vacance<sup>10</sup> et de ceo porroms vocher record.

*Toudebi* cele usage qest en countre comune ley et droit tut fut il use c. auntz ceo ne dorreit pas tite et dit qe mes qe leuesqe auoit use cele usage c. auntz luy et ces predecessours al dereynt serreint il foriuges par ley.

SPIGURNEL nous troueroms ceste chose par assise.

Lassise vynt et dit qe le Erceuesqe dut auer la garde solom usage de Gauilkende mes il disoent qe celuy qi fut plus procheyn du saunke

<sup>1</sup> Note from  $\gamma$  and  $\epsilon$ . Text from  $\gamma$  collated with  $\epsilon$ . <sup>2</sup>  $\epsilon$  adds Nota la.  
<sup>3</sup> Note from  $\alpha$  and  $\beta$ . Text from  $\alpha$  collated with  $\beta$ . <sup>4-4</sup>  $\beta$  omits. <sup>5</sup> Reported by  $\gamma\gamma$  and  $\zeta$ . Text from  $\gamma\gamma$  collated with  $\zeta$ . Names of parties from E.R. (m. 8d). See Appendix A, p. 43, for the record. <sup>6-6</sup>  $\zeta$  omits. <sup>7-7</sup> oes les enfanz  $\zeta$ .  
<sup>8</sup> le dit  $\zeta$ . <sup>9</sup>  $\zeta$  adds et K. <sup>10-10</sup> tens de see vacante  $\zeta$ .



## NOTE.

The mortdancestor does not lie in respect of tenements that are devisable.

## NOTE.

Note that SPIGURNEL J. held that the mortdancestor did not lie in respect of tenements holden in Canterbury either by inheritance or purchase that were devisable, as in Nicholas Capedot's case.

HELLIS *v.* SANDWICH.

John the son of John at Hull and Robert his brother brought the mortdancestor against Thomas the son of Thomas of Sandwich who came and said that he claimed naught in the tenements save as guardian until the age of the infants, and he said that John at Hull, the father of the infants, held these same tenements of Robert, Archbishop of Canterbury, and died, whereby the Bishop had the wardship of the infants, because he had the right to the wardship of the infants of all his tenants according to the customs of gavelkind. And afterwards there came one Robert, uncle of John, on behalf of the mother, and made fine to have the wardship until the age etc., and the said Robert afterwards granted that wardship to John Malemains, and John Malemains afterwards granted it to us; and so we have naught save wardship. Judgment.

Mort-  
dancestor.

SPIGURNEL J. Let the assize come.

*Toudeby.* You have said that the tenements are gavelkind; and so are not holden by knight-service. But by the common law you cannot have wardship of tenements holden in socage. Wherefore etc.

*Passeley.* According to the custom of gavelkind the Bishop is entitled to the wardship of all the infants etc. and has always had it, for their ancestor held of him in chief; and the king has had the profits during a vacancy of the see; and of that we can vouch record.

*Toudeby.* That custom is contrary to common law and right, and, though the custom were continued for a century, such use would not turn it into a right;—and he said that if the Bishop and his predecessors had followed this custom for a hundred years, yet at the end of them the law would condemn them.

SPIGURNEL J. We will find the truth about this matter through an assize.

The assize came and said that the Bishop ought to have the wardship according to the custom of gavelkind, but they added that the nearest in blood was entitled to acquire the wardship from the Bishop at his own

durreit du soen a lerceuesqe pur la garde et qil Rendreit acount quant lenfantz furent dage.

SPYGURNEL ceo qe <sup>1</sup>le Gardeyn<sup>1</sup> dorreit pur la Garde serra ceo poynt<sup>2</sup> alowe en lacounte.

*Lassise* oyl et diseient outre qe le gardeyn lessa la garde a John malemeyns et John a Thomas et qe lenfantz sount unqore denz age pur quei fut agarde qil ne prist rien par son bref etc.

### CHAMBERLEYN v. ASKWOD.<sup>3</sup>

Thomas le Chamberleyн porta le mortdancestre de la mort Eleyne sa mere des certains tenemenz vers Roger de Askwod et voleit auerer les pointz de son breve.

*Ingham.* Austin de Ripoun enfeffa de mesmes ceux tenementz Roger a lui et ses heirs de son corps engendrez et vous dioms qil y ad heir en qi repose le fee sanz qi il ne put respondre etc. et prioms eid de lui.

*Spigurnel.* eide ne deuez auer qil cleiment estat de une agnes qest tut estrange a Eleyne de qi mort nous portoms ceste assise autre chose serreit sil clamassont estat qe nous feseoms priue par nostre purchase et de autre part Roger fut le primer a qi le doun se fist pur quoi il put vocher donc il nous semble qil ne deit auer eid.

*Migg.* les tenemenz ne poet il rendre sanz celui en qi le fee repose pur quoi il nous semble qe eid deuoms auer dil issue.

*Toudebi.* la ou tenemenz sont done en fee taille quant celui ad issue a qi le doun se fist le fee est seure del franc tenement et ceo est en le issue soulement le franc tenement demourt en le pere.

*Hert.* il ne deit eid auer qe si il duet estre ressu ceo serreit par lei especial ou par comune ley par comune lei ne put il etc. Car auant lestatut le pere put alier si tost com il auoit issue ne par lei especial kar lestatut<sup>4</sup> voet qe si le pere face defaute ce li a qi la reuersion apent serra ressu a defendre son terre et ne mie a eid prier ergo etc.

BRABAZOUN. mes qe le issue seit celui a qi la forme se tailla per tant ne suist il mie qe le fee seit en le issue et pur ceo dites outre.

<sup>1-1</sup> lenfant ζ.      <sup>2</sup> ζ omits.

<sup>3</sup> Reported by aa only.

<sup>4</sup> Statute of

Westminster II, cap. iii.

cost, and that he must render an account when the infants attained their age.

SPIGURNEL J. Ought not the sum paid by the guardian for the wardship to be allowed in the account?

*The Assize.* Yes. And they said further that the guardian afterwards granted the wardship to John Malemains, and John granted it to Thomas, and that the infants are still within age. Wherefore it was adjudged that the demandant take naught by his writ etc.<sup>1</sup>

### CHAMBERLAIN v. ASHWOOD.<sup>2</sup>

Thomas Chamberlain brought the mortdancesthor upon the death of Ellen his mother against Roger of Ashwood in respect of certain tenements, and desired to aver the points of his writ.

*Ingham.* Austin of Ripon enfeoffed Roger of these same tenements to hold to him and the heirs of his body begotten; and we tell you that an heir exists in whom the fee reposes, and Roger cannot answer without him, and we pray aid of him.

*Spigurnel.* You ought not to have aid; for they are asserting an estate in one Agnes who is a complete stranger to Ellen upon whose death we bring this assize. It would be otherwise if they asserted an estate in some one whom we had made party by our purchase. And, further, Roger was the first to whom the grant was made, and therefore he can vouch. Wherefore we submit that he ought not to have aid.

*Miggeley.* He cannot render the tenements without him in whom the fee reposes; and so we submit that we ought to have aid of the issue.

*Toudeby.* In the case where tenements are granted in fee tail, and the grantee has issue, the fee is severed from the freehold; and the fee is in the issue, while the freehold only is in the father.

*Hartlepool.* He ought not to have aid; for, if he ought to be received, it must be either by statute or by common law. By common law he cannot etc. For previously to the statute the father could alienate as soon as he had issue, but by the statute he cannot; for the statute<sup>3</sup> says that if the father does aught in wrong of him to whom the reversion belongs, the reversioner shall be received to defend his land but not to pray aid. Wherefore etc.

BRABAZON J. So long as the issue be he in whom the right of succession is vested; but it does not follow from that that the fee [in your case] is in the issue; and therefore plead over.

<sup>1</sup> See *Introduction*, p. xv.

<sup>2</sup> See *Introduction*, p. xvi.

<sup>3</sup> Statute of Westminster II, cap. iii.



*Spigurnel.* il priont eid pur targer lassise.

*Heng.* pur eser la court nous vous dioms qe assise ne deit estre qar un Robert fiz Eleine frere Robert [*sic*] qi porte ceste assise en le Eire de Euerwik deuant Sir Johan de Vaus reconust partie des tenemenz qi sont demandez les qeus un J. Mauleuerer tint par la lei de Engleterre apres la mort E. estre le dreit Aunger de Ripoun etc. et partie des tenemenz les qeus Agnes la mere Eleine tint en dowere del dowement son baron reconust estre le dreit a mesme cest Aunger dount mesme cesti A. suist breve de la note a fere venir J. Mauleuerer et Agnes mere Eleine qi vindrent et clamerent tenir a terme de lur ij. vies et se attornerunt de foialte et des autres seruices a Aunger de Ripoun et ore voloms auer par record le quel Aunger enfeffa un Roger a lui et les heirs de son corps engendrez et nentendoms pas qe assise deuie estre.

*Spigurnel.* vous auez bien entendu qe nous ne sumus pas partie a la fin et coment qe la fin fust leue entre Robert et Aunger nous vous dioms qe Eleyne de qi mort nous portoms ceste assise suruesquist Robert son fitz et morust seisi en son demene come de fee et prioms lassise.

*Scot.* sicut prius.

*BRABAZON.* mes qe Eleine mesme ust fait la conisance a Aunger uncore poet ele deuier seisi par continuance ou par nouel purchaz.

*Warr.* impossible serreit qe J. tenist par la lei de Engleterre de tenir E. sa femme viuant.

*BER.* J. ne poet auer estat pur quoi nient plus desturber.

*Spigurnel* qe Eleine survesquist R. et morust seisi etc. prest etc. par assise.

*Warr.* qe J. tint par la lei de Engleterre et lui et Agnes se attornerunt a Aunger de foialte apres la mort Eleyne prest etc. et fust agarde lassise etc.

#### ANON. v. LUDGATE.<sup>1</sup>

Mortdancestre ou celi qi fust a respondre fust bastard et la resomons et le proces chalenge.

Quatre soers porterent un mortdancestre vers Symond de Ludgate de la mort lur mere al primer iour S. fust essone auoit iour par lassone as utasues de la Purification a quel iour S. fist defaute mesme le jour

<sup>1</sup> Reported by *aa* only.

*Spigurnel.* They are praying aid for the purpose of delaying the assize.

*Ingham.* To assist the Court we will tell you that the assize should not be awarded ; for, in the Eyre of Yorkshire before Sir John of Vaus, one Robert, the son of Ellen and brother of the Thomas who brings this assize, admitted that that part of the tenements that are now in demand which one J. Mauleverer held by the law of England after the death of E. was the right of Ainger of Ripon etc., and that that part of the tenements which Agnes the mother of Ellen held in dower by the endowment of her husband was the right of this same Ainger. And thereupon this same Ainger sued out a summons on the note [of the fine] to compel the attendance of J. Mauleverer and Agnes the mother of Ellen, who came and claimed to hold for the term of their two lives, and attorned themselves by fealty and other services to Ainger of Ripon ; and we will aver by record that that same Ainger enfeofed one Robert to hold to him and the heirs of his body begotten ; and we submit that the assize ought not to pass.

*Spigurnel.* You have heard that we are no party to the fine and how that the fine was levied between Robert and Ainger. We tell you that Ellen, upon whose death we bring this assize, survived her son Robert, and died seised in her own demesne as of fee ; and we pray the assize.

*Scott. as before.*

BRABAZON J. Even though Ellen made the recognition to Ainger, she yet might have died seised by continuance or by a fresh purchase.

*Warrington.* It would be impossible for J. to hold of his wife E. by the law of England while she was yet alive.

BEREWIK J. cannot have any estate, and so there can be no impediment in that quarter.

*Spigurnel.* Ready to aver by assize that Ellen survived Robert and died seised etc.

*Warrington.* That J. held by the law of England and that he and Agnes attorned themselves by fealty to Ainger after the death of Ellen, ready etc. And the assize was awarded etc.

#### ANON. v. LUDGATE.

Mortdancestor where the defendant was a bastard, and the resummons and process were challenged.

Four sisters brought a mortdancestor against Simon of Ludgate upon the death of their mother. Upon the first day Simon was essoined and had a day by essoin in the octaves of the Purification. He made

vint un enfant deinz age Laurence per noun et dit qe S. nauoit en les tenemenz si noun franc tenement et le fee et le dreit reposent en sa persone et pria qe nul defaute qe S. purra fere ne lui trauast en preuidice de sicom il est venuz auant jugement rendu et prest est a respondre.

Les soers diseiont qe en sa persone fee et dreit ne poit demorer Car il est bastard prest etc. par la ou fere le deiount. Laurence dit qil est Mulere et qil nasquist deinz les esposailles etc. pur quoi fust agarde qe ceo serreit mande a la court Cristiene al Euesqe de Bathe pur quoi le plee demora sanz jour et puis le official certefia a la court qil fust bastard pur quoi les soers purchaceront la resomons vers Laurence par quel resomons Laurence vint en court.

Gos. nous chalengoms la resomons car ele est defective en sei par la reson qe en chequn reson couent il especefier la cause pur quoi la plee demoura sanz iour et de sicom cele resomons ne especefie nule cause demandoms jugement. Item chequne resoms est come bref de jugement qe ist hors des roules et deit sure le bref original et estre de mesme la nature et vous dioms qe le bref original veut sur Simond et la resomons veut sur Laurence jugement de la variation. Item chequne resomons veut estre porte sur certain et verray tenant des tenemenz et Laurence nest une verray tenant sur qi la resomons vint et demandoms jugement. Item nous chalengoms le proces a de primes qe la ou il dient qe S. fist defaute par la quele etc. nous vous dioms qe defaute ne put il fere Car chesqun home qi deit estre somone al bref de assise il couent qe la somons lui seit fete al meins xv. iours auant son iour mais S. ne fust somone fors iiij. iours auant lassise donc ily ad erreur de proces et prioms qe ceo seit amende. Item nous vous dioms qe la ou lassise fust arame deuant les iiij. Justices la ou lur poair fust entier et cele essone fust aiugie et aiourne par les iij. en absence del quartre donc ily ad erreur de proces et prioms qe ceo seit amende. Item quant la bastardie fust alegge vers lenfant deinz age il le manderent a la court Christiene et nous vous dioms quant bastardie est alegge vers enfant deinz age ceo ne deit estre mande iesques a loial age lenfant et prioms qe ceo seit amende. Item celi a qi la bastardie est mande il mesme deuereit auer certefie la court de la bastardie et de sicom la bastardie fust mande al euesqe de Bathe et il ne certefia mie ceste court einz son official donc etc. Item chequn resomons veut en sei celui seit



default on that day ; and upon the same day came an infant within age, Lawrence by name, who said that Simon had naught beyond a freehold in the tenements and that the fee and the right were in his own person ; and he prayed that no default of Simon should work to his prejudice ; and therefore has he come before judgment given and is ready to answer.

The sisters said that the fee and the right could not be in him, for he is a bastard. Ready etc. in such manner as they ought to do. Lawrence said that he was legitimate and born within wedlock etc. It was thereupon ruled that the question must be referred to the Court Christian of the Bishop of Bath. The plea, therefore, stood over without day ; and afterwards the Official certified the Court that Lawrence was a bastard. The sisters thereupon took out a resummons against Lawrence in obedience to which Lawrence came into court.

Gos. We challenge the resummons on the ground that it is defective in form ; for it ought to show the specific reason why the plea stood over *sine die*. Since this resummons specifies no reason we demand judgment. Again, every resummons should, like a writ of judgment extracted from the roll, follow the words of the original writ and be similar to it ; but we tell you that the original writ lies against Simon, while the resummons lies against Lawrence. Judgment of the variation. Again, every resummons should lie against a certain and actual tenant of the tenements ; and Lawrence, against whom the resummons is directed, is not an actual tenant, and we ask judgment. Again, we challenge the original process ; for where they say that Simon made default, by reason of which default etc., we say that he could not make default. For every one who is summoned by a writ of assize should receive his summons at least fifteen days before the day assigned, while Simon was not summoned till four days before the assize. Consequently there has been an error in process ; and we pray that this be amended. Again, we say that while the assize was arraigned before the four Justices in a matter where they form an integral authority this essoin was granted and adjourned by three of them in the absence of the fourth. Here there was a faulty process, and we pray that it be amended. Again, when bastardy was alleged against an infant within age, the question was remitted to Court Christian ; and we tell you that when bastardy is alleged against an infant within age the question ought not to be referred until the legal age of the infant ; and we pray that that may be amended. Again, he to whom the question of bastardy is referred ought himself to have certified the court of the bastardy ; now the question was referred to the Bishop of Bath, but it is his Official, and not he himself, who has certified this court ; consequently etc. Again,

resomone qi a de primes fust somone mais nous vous dioms qe Laurence ne fust unques somone auant ore etc. demandoms jugement de la resomons.

*Hengh.* la ou vous chalengez la resomons pur le reson qe en la resomons la cause nest mie especefie nous vous dioms qe la cause est bastardie pur la quele la parole fust sanz jour especefie jugement si la resomons ne seit assez bone.

*Gos.* la ou vous dites qe la cause est bastardie vous dites mal Car la cause est qe la bastardie fust mande a la court Christiene la quele nest mie especefie et demandoms jugement.

Et aueront jour a la xv. de seint Martin. Ad quem diem partes venerunt.

*Gos.* uncore nous chalengoms cele resomons qe Simond fust partie al play et nient al resomons.

*Hengh.* un tenant par la lei de Engleterre est enplede fet defaute apres defaute pur quoi la terre est en point de estre perdu vint le heir en qi persone le dreit repose et prie de estre resceu et est resceu et il voche agarantir et le garanti mourge einz ceo qe il viegne en court son fitz est deinz age il revochera lenfant deinz age lenfant prie qe la parole demourge tange a son age la parole demourt tant qe a son plein age le quel serra celui resome qi tient par la lei de Engleterre ou le heir en qi persone le dreit repose certes le heir et sil ne fust il mie partie au plai pour quoi nous agardoms la resomons bone respondes outre.

*Gos.* chalenga le proces com auant et dit autres ij. resons sire la ou lenfant qest deinz age et est tenant et pria de estre resceu la fust dit qil fust bastard la quele excepcion touche ausi pur tutz jours com fet bataille ou grant assise et tantost fust mande a la court Christiene pur quoi ily ad errour en la proces. Et de autre part la ou il diseient qe lassise fust araine vers Laurence il diseient mal qe lassise fust porte vers Symond et nient vers Laurence.

*MET.* respondes a ces excepciones qil met en contre le proces.

*MET.* non obstante istis excepcionibus chargea lassise sur ij. pointz sestasaue si lur mere de qi mort il porterent ceste assise morust seisi

every resummons is supposed to resummon him that was originally summoned, but we tell you that Lawrence was never summoned before now etc. We demand judgment of the resummons.

*Ingham*. Whereas you challenge the resummons upon the ground that the cause of it is not stated in it, we tell you that the cause is that same bastardy by reason of which the hearing stood over *sine die*. Judgment whether the resummons be not good enough.

*Gos*. When you say that bastardy was the cause you are wrong for it was the reference of the question of bastardy to Court Christian that was the cause, and that is not specified; and we demand judgment.

And they had a day in the quindenes of St. Martin. Upon which day the parties appeared.

*Gos*. Again we challenge this resummons, for Simon was party to the plea and is not party to the resummons.

*Ingham*. A tenant by the law of England is impleaded and makes default after default, so that the land is in peril of being lost. The heir, in whose person the right reposes, comes and prays to be received, and is received. He vouches to warranty, and the warranty stands over until the warrantor comes into court. His son is within age. He will revouch the infant within age. The infant prays that the hearing may stand over until his age. The hearing does stand over until his full age. Who will be resummoned? He who holds by the law of England or the heir in whose person the right reposes? The heir, certainly; and yet he was not party to the plea. Wherefore we rule the resummons to be good. Answer over.<sup>1</sup>

*Gos*. challenged the process as before and said:—Yet two other reasons, Sir. When the infant who is within age and is tenant prayed to be received, it was objected that he was a bastard. That exception is as final as the result of battle or grand assize, and yet it was referred to Court Christian; and therefore there has been an error in process. And again; when they say that the assize was arraigned against Lawrence they are wrong, for the assize was brought against Simon and not against Lawrence.

METINGHAM C.J. Reply to the objections which he takes against the process.

Notwithstanding these objections METINGHAM C.J. charged the assize upon two points, namely, whether the mother of the sisters, upon whose death they brought this assize, died seised in her own demesne

<sup>1</sup> This is as clearly the speech of a judge as the previous speech attributed to *Ingham* is clearly the speech of counsel.



en son demene come de fee et puis le terme et de la value du maner mais la quele il furent plus procheins heirs ou ne mie lassise ne fust mie charge etc.

ANON. v. ANON.<sup>1</sup>

Mortdancestre ou celi de qi mort etc. morust hors del roialme et le bref ne dit mie die quo etc. pur quei le bref se abati.

Robert de C. porta le mortdancestre vers un William.

*King.* son auncestre de qi mort etc. morust hors de ceste roialme jugement sil deuie estre respons.

*How.* qil morust en son demene com de fee prest etc. et tut ne morust il mie en ceste roialme pur tant ne deit il mie nostre bref abatre.

*King.* ily ad certeine forme de bref ou le jour qil prist veiage etc. jugement.

*Hunt.* si vous me volez ouster de comune lei et moi mettre al especial il vous couent granter moi lespecial pur quoi si vous me volez ouster del mortdancestre il vous couent granter qil fust seisi le jour etc.

*Hengh.* ne couent qe ily ad certain cas ou le Mortdancestre git Car ceo bref ne git mie forsqe la ou launcestre morust en ceste roialme Car de puis qil morust hors del Roialme coment deiuent les gentz de cel pais sauuer sil morust en son demene ou non. Estre ceo nous voloms auerer qil prist veage etc. sil volez dedire.

*Hunt.* noluit hoc recipere et ideo breve quassatur.

ANON. v. ANON.<sup>2</sup>

Un Amail auoit un fitz qi fist felonie pur la quele il fust pendu viuant son pere. Amail auoit .iiij. feil qi porterent le Mortdancestre.

*Scrope.* accion ne pount il auer Car Amail auoit un fitz qi survesquist sa mere le quel fitz fist felonie pur la quele il fust pendu etc. de sicom nul dreit put destre a eux si noun par my Johan qi fust pendu jugement.

*Ing.* nous voloms auerer les pointz de nostre bref Car de sicom nous demandoms rien par my lui omission de lui ne nous seit greil.

*Scrope.* si Johan ust relese et quiteclame vous serriez ouste de accion pur quoi etc.

*Ing.* si vous eiez relees et quiteclame le mettez auant. Estre ceo en

<sup>1</sup> Reported by *aa* only.

<sup>2</sup> Reported by *aa* only.

as of fee and within the limitation,<sup>1</sup> and as to the value of the manor ; but upon the question whether they were the nearest heirs the assize was not charged etc.

## ANON. v. ANON.

Mortdancestor where he upon whose death the writ was brought died without the realm, and the writ did not say upon what day he took ship etc., and the writ was consequently abated.

Robert of C. brought the mortdancestor against one William.

*Kingshemmede.* His ancestor, upon whose death etc., died without this realm. Judgment whether he ought to be answered.

*Howe.* Ready etc. that he died [seised] in his own demesne as of fee ; and though he did not die within this realm yet ought not our writ to be abated.

*Kingshemmede.* There is a statutory form of writ setting out the day when he took ship etc. Judgment.

*Hunt.* If you want to oust me from the common writ and put me under the special one you must grant me the conditions of the special writ<sup>2</sup> ; and so, if you want to oust me from the mortdancestor, you must admit that he was seised upon the day etc.

*Ingham.* This is not a case where the mortdancestor lies, for this writ lies only where the ancestor dies within this realm. For, if he died outside this realm, how can the people of this country know whether he died seised in his own demesne or not ? Further, we will aver that he took ship etc. if you want to deny it.

*Hunt.* would not accept this, and so the writ was quashed.

## ANON. v. ANON.

One Amelia had a son who committed felony for which he was hanged during the lifetime of his father. Amelia had three daughters, who bring the mortdancestor.

Mort-  
dancestor.

*Scrope.* They cannot have action, for Amelia had a son who survived his mother. This son committed felony, for which he was hanged etc. ; so that the daughters can have no right save through John that was hanged. Judgment.

*Ingham.* We will aver the points of our writ ; for, since we are demanding naught through him, omission of him ought not to hurt us.

*Scrope.* If John had released and quitclaimed you would be barred from action. Wherefore etc.

*Ingham.* If you have a release and quitclaim, produce it. Further

<sup>1</sup> i.e. since the first passage of Henry III into Gascony.

<sup>2</sup> For the form of the special writ see F.N.B. 196.

cas ou homme deit fere descente omission de felon ne barre mais nous ne sumus point en tiel cas einz voloms auer les pointz de nostre bref jugement.

*Scot* felonie est si haynouse chose qil recoupe le sanc issi qe par my son sanc nul dreit ne put descendre a autre de son sanc mais ceus qe demandent sont de son sanc ergo etc. pur ceo qe il fust plus haut en le sanc qe eux ne sont.

*Ing.* qi estes vous qi mettez auant ceste excepcion.

*Scrop.* tenant des tenemenz.

*Ing.* ceste excepcion est done a priue ou a chef seignour mais vous nestes lun ne lautre pur quoi etc.

*Scrope* assez sumus nous priuez a la tenance a qi est grante defense a reboter son aduersare de accion.

*Hert.* quiteclame en qi mains qe ele deuendra est barre mais excepcion de accione ne gist point forsque en la voucher le chef seignour quant il est entre par veie de Escheit pur quoi etc.

*Scot.* ily unt excepciones dont le tenant put auer lauantage a maintenir sa tenance des queus sil fust hors de tenance il nauereit nul auantage des queus ceste une en qi persone demoura le fee et le dreit apres la mort Amail.

*Ing.* nous voloms auer les pointz etc.

*Scrope.* uncore assise ne deit estre qe un Walter fust seisi de ceus tenemenz en son demene etc. vint un Roger et disseisi Walter Roger hors sa seisine enfeffa Johan et Amail Walter porta lassise vers Johan et Amail et Roger pendant quel assise Amail morust mais pur ceo qe ily auoit tenant et disseisour lassise passa pur quoi Walter recouera sa seisine et de puis qe le tort fust troue en la persone Roger et par tant tut ceo qe fust fet en le meen temps est anienty jugement si assise deieue estre.

*Scot.* il ne fust mie partie al jugement et grante est qele ont estat de franctenement iugement si assise ne deit estre.

*Heiham.* si ieo seie disseisi et mon disseisour aliene les tenemenz et ieo recouere par assise moun primer estat ou suffit auer tenant et disseisour tut lestat en meen temps est defet Estre ceo si un homme fust tenant en le meen temps et se lesse morir auant la disseisine etc. si sa femme recouereit dowere la lei serreit mult defectif.

*Ing.* grantez qe A. fust seisi com de franc tenement et qe ele ne fust une partie al jugement si ele fust en vie quel recouerir auereit ele latteinte



than this, in cases where descent has to be shown, the omission of a felon is no bar. But we are not in that case, and we will aver the points of our writ. Judgment.

*Scott.* Felony is so heinous a thing that it attaints the blood, so that no right can descend to another through a felon's blood. But here the demandants are claiming through his blood, for he was higher in the line of descent than they are, therefore etc.

*Ingham.* Who are you that tender this exception ?

*Scrope.* Tenant of the tenements.<sup>1</sup>

*Ingham.* This exception is allowed to a party or to the chief lord, but you are neither the one nor the other. Wherefore etc.

*Scrope.* We are sufficiently party, through the fact of our tenancy, to be granted the defence of rebutting our opponent from his action.

*Hartlepool.* A quitclaim acts in bar, into whose hands soever it may have fallen ; but exception to an action does not lie except by voucher of the chief lord when he has entered by way of escheat. Wherefore etc.

*Scott.* There are exceptions of which a tenant may take advantage for maintaining his tenancy of which he could not have the advantage unless he were in actual possession ; and one of such exceptions is to raise the question in whose person the fee and right reposed after Amelia's death.

*Ingham.* We will aver the points etc.

*Scrope.* Yet another reason why the assize should not lie is that one Walter was seised of these tenements in his own demesne etc. One Roger came and disseised Walter. Roger out of his seisin enfeoffed John and Amelia. Walter brought the assize against John and Amelia and Roger. During the pendency of that assize Amelia died ; but, because there was a tenant and a disseisor, the assize passed ; and through it Walter recovered his seisin. Therefore, since it was found that Roger's action was tortious and since all that was done in the meantime was consequently void, judgment whether this assize should pass.

*Scott.* They were no party to the judgment, and it is admitted that they have an estate of freehold. Judgment if the assize should not pass.

*Heigham.* If I be disseised and my disseisor alienate the tenements and I recover my former estate by assize, where it is sufficient if there be a tenant and disseisor [named in the writ], all the mesne estate becomes naught. Further than this, if would be a great defect in the law if the wife of a man that was tenant during the interval and died before the recovery<sup>2</sup> etc. could recover dower.

*Ingham.* Admitting that Amelia was seised as of freehold and was not party to the judgment, what recovery could she have got if she

<sup>1</sup> From what follows we must suppose that he was tenant by lease only.

<sup>2</sup> i.e. before the disseisor was himself disseised.

ne mie si ele ne fust une partie et issint serreit ele sanz recouerir Estre ceo si ele ust este partie al primer play ele put auer son recouerir par bref de garrantie de Chartre tut fut il issint qe la disseisine fust atteint en la persone Roger et Johan et de puis qe ele morust seisi com de fee jugement si son fitz<sup>1</sup> ne put auer son recouerir par le mortdancestre.

*Scot.* Ieo vous mostre qe noun quant Johan et Amail pourchacent ceux tenemenz au tiel estat accrust a A. com a J. mais puis quant la disseisine fust trouee tut lestat Johan fust esteint et meillour estat ne auoit A. donc il nous semble qe tut lestat A. est esteint qe ele ont par la chartre et en tant fust la chartre anienty mais si son heir auereit son recouerir par le Mortdancestre par tant serreit la chartre afferme bone qe auant fust anienty par lassise et issi de un mesme chose auereioms contrarious jugement.

*Ing.* il nen suit nient si ieo par assise de nouel disseisine qe ieo recoueray et mie par le mortdancestre.

*Heigam.* par vous le fitz celi qī morust seisi recouereit et sa femme dowere et issint le primer jugement ne prendreit nul effect et le disseisine sanz recouerir.

*Ing.* il auereit son recouerir par bref de entre fundu sur la nouel disseisin.

*Heiham.* de puis qe A. naueit estat si noun ioint ofue son baron le quel estat fust atteint pur nule et Walter en son primer estat etc.

*Ing.* et nous jugement de puis qe Johan naueit estat si noun de franctenement par la lei de Engleterre del dreit les demandanz la quele Amail morust seisi.

*Heiham.* nient del dreit Amail mais le purchas Johan et Amail iointement prest etc.

Iudicium.

Ideo assisa que dicit quod fuit perquisitio Iohannis et Amail ideo etc. quod nichil ceperunt per breve suum set in misericordia etc.

#### LATIMER v. TWENG.<sup>2</sup>

Mortdancestre de la mort le pere en le fet le Ael fust mis com barre.

Willelmus Le Latimer et Luce sa femme arramerent une assise de Mortdancestre vers Marmaduk de Tweng Gawain de C. et Margarete de Ros et fust le bref tiel etc. Si Willelmus etc. Summonite etc. quod sint coram Justiciariis nostris apud Ebor in Octabis sancti Hillarii parati

<sup>1</sup> Probably a slip for *filles*. The son was dead.

<sup>2</sup> Reported by *aa* only.

were alive? By attain? Not if she were not a party; and so she would have been without recovery. More than that, if she had been party to the first plea she might have had her recovery by writ of warranty of charter even though disseisin were brought home to Roger and John; and, since she died seised as of fee, judgment whether her daughters cannot have their recovery by the mortdancestor.

*Scott.* I am going to show you that they cannot. When John and Amelia purchased these tenements, similar estates accrued to both Amelia and John. But, when the disseisin was proved, all John's estate was extinguished; and Amelia had no better estate than he had. Therefore we submit that all the estate that Amelia got by the charter was extinguished, and to that extent the charter was annulled. But, if her heir could have recovery by the mortdancestor, that would be tantamount to affirming that a charter which had been previously declared by an assize to be bad was, in fact, good; and so we should have two contrary judgments in respect of the same fact.

*Ingham.* That does not follow if I have recovered by assize of novel disseisin and not by the mortdancestor.

*Heigham.* By your argument the son of him that died seised would recover, and his wife would get her dower; and so the first judgment would be of none effect and the disseisin would remain without remedy.

*Ingham.* He could have his recovery by writ of entry founded on novel disseisin.

*Heigham.* Since Amelia had no estate save jointly with her husband, which estate was found to be naught, and Walter was restored to his original estate, [judgment] etc.

*Ingham.* And we ask for judgment since John had no estate, except by way of freehold by the law of England, in right of Amelia, who died seised of the tenements in demand.

*Heigham.* Not of the right of Amelia, but of the purchase of John and Amelia jointly. Ready etc.

And so the assize came and said that it was the purchase of John and Amelia; and so they took naught by their writ, but were in mercy etc.

#### LATIMER v. THWING.<sup>1</sup>

Mortdancestor upon the death of the father, where the grandfather's deed is tendered in bar.

William Latimer and Lucy his wife brought an assize of mortdancestor against Marmaduke of Thwing, Gawain of C. and Margaret of Ross; and the writ ran etc. If William etc. summon etc. that they be before our Justices at York in the octaves of St. Hilary ready by

<sup>1</sup> See *Introduction*, p. xvii.



sacramento etc. si R. de T. pater prediete Lucie fuit seiscitus in dominico suo ut de feodo de Manerio de Liton et Couelonde exceptis tribus bouatis terre in eodem manerio etc. Et sumonite predictum Marmadukum etc. qui manerium illud exceptis etc. tenent quod sunt ibi audituri illam recognicionem. Et sur ceo vint Margarete et dit qe ele tint ceux tenemenz a terme de sa vie du lees Marmeduk et de cel estat lui vocha agarrantir le quel vint en court et garranti et puis chalenga le bref en tant qe la grande chartre veut qe les assises de mortdancestre et de nouel disseisine seient pris en mesme le counte ou les tenemenz sont et en ceo cas deit bref auer en sei certain iour et noun pas jour de terme et sic non est in proposito jugement du bref.

*Warr.* vous auez garranti et rien ne dites pur quei lassise deiue remeindre et prioms lassise.

*Herl.* com en assise de nouel disseisine les Justices ne deiuent mie entendre le quarte jour de agarder lassise par la defaute le defendant ausi en assise de Mortdancestre il ne attendent mie le quarte jour de agarder lassise par defaute le tenant Car sil facent defaute al primer jour si pount les Justices agarder lassise par lur defaute et del hure qe certain jour deit estre mis en assise de mortdancestre et noun pas jour de terme et en cesti bref est comun jour ausi com il dussent attendre le quarte jour jugement.

*Warr.* vous fetes semblance entre assise de mortdancestre et assise de nouel disseisine il ne sont pas semblables. Car en assise de mortdancestre gist essone pour le tenant et en assise de nouel disseisine nient et vous ne dites nient pur quoi lassise deit remeindre et prioms lassise.

*MALLUR.* nous sumus les Justices le Roi ci en ceste assise arraine en mesme le Counte ou les tenemenz sunt et vous estes venuz a jour certain par somons de oier la reconisance del assise pur quoi nous demandoms si vous volez rien dire pur quoi lassise deiue remeindre.

*Herle.* le bref est defectif car la demande est le maner cum pertinenciis forspris etc. et puis en la somons del bref par la ou il dit Et sumonite predictos etc. qui in manerium illud etc. exceptis etc. il ne dit pas cum pertinenciis et de ceo demandoms jugement.

*Warr.* ut prius et prioms lassise.

*Scrope.* la somons la demande deiuent abatre Car si ore demande fust ij. Carues de terre et la somons forsque une carue de terre le bref se abatereit ausi par decea.

oath etc. whether R. of T. father of the aforesaid Lucy was seised in his own demesne as of fee of the manor of Lythe and Coatham with the exception of three bovates of land within the same manor etc. And summon the aforesaid Marmaduke etc. who hold the said manor with the exception of etc. that they be there to hear the said recognition. And thereupon Margaret comes and says that she holds those tenements by the lease of Marmaduke for the term of her life ; and she vouched him to warrant her of that estate. And he came into court and warranted her and then challenged the writ upon the ground that the Great Charter provides that assizes of mortdancestor and novel disseisin shall be taken in that same county wherein the tenements are ; in which case the writ is to name a day certain and not a term-day ; and this has not been done. Judgment of the writ.

*Warrington.* You have warranted and said naught as to why the assize should not pass, and we pray the assize.

*Hartlepool.* As in an assize of novel disseisin the Justices ought not to await the fourth day before awarding the assize through the defendant's default, so in an assize of mortdancestor they do not await the fourth day before awarding the assize through the tenant's default. For if they make default on the first day the Justices can award the assize by reason of such default ; and since a day certain ought to be assigned for the assize of mortdancestor and not a term-day, and in this writ a general day is assigned, and the Justices are to wait till the fourth day, judgment.

*Warrington.* You are supposing a similarity between an assize of mortdancestor and an assize of novel disseisin, and they are not similar. For in an assize of mortdancestor an essoin lies for the tenant, but it does not in an assize of novel disseisin. And you say naught to show why the assize should not pass, and we pray the assize.

MALLORY J. We are here as the King's Justices commissioned to take this assize in the same county wherein the tenements are, and you are here by summons upon a day certain to hear the recognition of the assize ; and so we ask you if you have anything to say why the assize should not pass.

*Herle.* The writ is defective, for the demand is for the manor together with the appurtenances except etc. And, afterwards, in the summons of the writ where it says 'and summon the aforesaid etc. who hold that manor with the exception etc.,' it does not say 'together with the appurtenances,' and as to that we ask judgment.

*Warrington as before ;* and we demand judgment.

*Scrope.* The summons ought to abate the demand ; for, if the demand were now for two carucates of land and the summons spoke of only one, the writ would abate. So here.

*Met.* [*sic*] homme couent auer tenant de sa demande et de puis qil demande le maner ofue les apurtenances et la somons ne lui fet tenant del apurtenance. Jugement.

*Warr.* la forme de la Chauncerie est qe homme ne fra nule mencion en la somons de les appurtenances et de puis qe vous ne dites rien etc. nous prioms lassise.

Et puis weyuerunt cele excepcion et diseiont qe Marmaduk qest tenant par sa garantie tient les tenemenz a lui et les heirs de son corps engendrez et ad issue une Margarete en qi persone etc. sanz qi etc. et prie eid de lui.

*Warr.* de qi doun.

*Hertp.* nous ne pouns estre partie a vous Car nostre estat est si feble qe a vostre estat ne pouns respondre sanz celi en qi persone le fee repose et prioms eid etc.

*Warr.* vostre excepcion est insufficient sanz ceo qe vous diez de qi doun.

*Hert.* nous ne dirroms mie de [*sic*] vous qe vous nestes mie partie a nous mais nous dirroms a la court une chartre qe tesmoigne qe un Marmeduk ael celui qest prie en eid dona ceux tenemenz a Marmeduk pere celui qest prie en eid en fee taille.

*Warr.* le quel mettoit il cele chartre com barre ou com evidence.

*MALUR.* com evidence.

*Warr.* la court ne deit james recevoir evidence auant qe la partie eit plede al assise ou qil eit dit reson pur quoi lassise deit remeindre et sil eit plede al assise donc est mester a mostrer evidence et noun pas auant mais sil met auant le fet com barre la court le deit bien recevoir pur quoi sil voillent cele chartre vser com barre nous responderons a ceo.

*Mut.* nous mettoms auant cele chartre com en evidence a mostrer quel estat nous auoms et vous dioms qe nous ne pouns a cele assise atteindre sanz celui en qi persone etc. Car ausi haut com vous biez a recouerir ausi haut estat couent qe le tenant eit mais vous demandez fee simple et nous ne auoms qe fee taille jugement si eid etc.

*Hert.* si nous vousissoms les tenemenz alier<sup>1</sup> a tardeins le heir les recouerait et de puis qe nous auoms si feble estat jugement etc. et si vous agardez etc. nous dirroms assez.

*Warr.* il ne serra mie entre en roule en plai de assise. Et si hoc non sufficeat dicemus aliud.

Ad alium diem il resortrent a lur primer chalenge.

*Hert.* Chequn bref de assise deit auer certain jour com Lundy

<sup>1</sup> It is just possible that in the MS. the symbol for 'et' is written immediately after 'alier,' but the writing is too much faded to permit of certainty one way or the other.



*Mutford.* A tenant of the full demand must be laid. The demandants demand the manor and appurtenances, but the summons lays no tenant of the appurtenances. Judgment.

*Warrington.* According to the form of summons issued by the Chancery no mention is made of the appurtenances ; and since you say naught etc., we pray the assize.

Afterwards they waived this exception and said that Marmaduke, who is tenant by his warranty, holds the tenements to himself and the heirs of his body begotten, and has issue one Margaret, in whose person etc., without whom etc., and he prays aid of her.

*Warrington.* By whose grant ?

*Hartlepool.* We cannot be party to you, for our estate is so slight that we cannot answer you, claiming the estate you are claiming, without her in whose person the fee reposes, and we pray aid etc.

*Warrington.* Your exception is insufficient unless you say by whose grant.

*Hartlepool.* We shall not tell you, for you are not party to us, but we will tell the Court—a charter which testifies that one Marmaduke, grandfather of her who is prayed in aid, granted these tenements in fee tail to Marmaduke, the father of her who is prayed in aid.

*Warrington.* Does he tender the charter in bar or as evidence ?

MALLORY J. As evidence.

*Warrington.* The Court ought never to receive evidence before the party has pleaded to the assize or has assigned cause why the assize should not pass ; and when he has pleaded to the assize he should then tender evidence and not before ; but if he tender the deed in bar the Court ought to receive it. Therefore if they want to use this charter in bar we will reply to it.

*Mutford.* We tender this charter as evidence of what estate we have, and we tell you that we cannot plead to this assize without her in whose person etc. ; for the tenant ought to have an estate of as high a nature as the estate which you are seeking to recover ; but while you are demanding a fee simple all that we have got is a fee tail. Judgment whether aid etc.

*Hartlepool.* If we wanted to alienate the tenements the heir could recover them afterwards ; and, since our estate is such a slight one, judgment etc. ; and, if you award etc., we shall have plenty to say.

*Warrington.* That will not go down in the roll as a plea to the assize. And if this be not sufficient we will say something else.

Upon a later day they returned to their first objection.

*Hartlepool.* Every writ of assize ought to assign a certain day, as

Mardy etc. et ne mie jour de terme et ceo bref voet jour de terme jugement.

*Warr.* vous auez plede plus haut et auez prie eid pur quoi etc.

*MALUR.* il y unt gentz de ceste place qi recordunt qe vous fustes partie en assise de Mortdancestre ou le bref se abati par mesme le chalenge.

*Warr.* put estre qe ceo fust en assise de nouel disseisine qe la couendreit qe la bref se abatereit mais ceo nest pas semblable en assise de Mortdancestre qest plus pres a la comune lei Car en nostre bref git le vocher et lessone pour le tenant et noun pas en assise de nouel disseisine.

*Hert.* nient plus serra le quart jour attendu en lun qe en lautre et tut est un ordre de entrer issint Assisa venit recognitura et ne dirra mie talis optulit se .iiij. die etc. pur quoi il sont assez semblables.

*Bacon.* nous trouoms brefs en lieux et les uns volent certain jour et les autres comun jour.

*MALLUR.* agardez vos jours a la .xv. de Pasch.

a quel jour *Hert.* demanda jugement du bref ut supra.

*Warr.* vostre chalenge est a la forme qe ne git point en la vouchier le garranti Car quant le tenant voche agarrantir afferme il la persone le demandant responable a le bref et la forme bone.

*Scot.* quant le garranti ad garranti donc est il primes partie al demandant et donqe demande il oier le bref pur quoi quant il ad oie et troue defaute en la forme del bref il le put chalenger Car autrement seruireit le oie de bref de nient.

*Mutteford.* al terme de seint Hillary fust le bref chalenge issint qe la partie vint a nous apertement de Nicole et nous dit coment son bref fust chalenge pur quoi Syre W. et moi alames a la Chauncerie et demandames des clerks de levische quele forme il aueient usee et diseient qe la une et lautre mais pur les resons qe furent dit qe en ceo bref put homme vocher a garrantir et garranti est en le dreit et le garranti deit auer iour auer iour [*sic*] de terme et pur ceo ceo bref est plus pres le dreit qe la nouel disseisine si assentimes adonqe qe la forme de cesti bref fust bone et ieo di qe vous nauerez iammes autre forme desormes hors de la Chauncerie et pur ceo detes autre chose.

Monday, Tuesday, etc., and not a term-day ; and this writ assigns a term-day. Judgment.

*Warrington.* You have put in a higher plea and have prayed aid ; wherefore etc.

MALLORY J. There are some here who tell us that you were in an assize of mortdancestor where the writ was abated upon the same objection.

*Warrington.* Was not that in an assize of novel disseisin ? In that case the writ would indeed abate, but it is not the same in an assize of mortdancestor, which is governed more by the common law ; for voucher and essoin lie for the tenant under our writ, but they do not lie in an assize of novel disseisin.

*Hartlepool.* But, on the other hand, the fourth day will be awaited neither in the one nor the other. The form of entry [in the roll] is the same in both cases, to wit, ' the assize came to recognise ' ; and it will never say that ' such an one presented himself upon the fourth day etc. ' ; wherefore they are practically the same.

*Bacon.* In some writs we have seen a day certain assigned and in others a general day.

MALLORY J. Await your days in the quindenens of Easter.

Upon which day *Hartlepool* asked judgment of the writ *as above*.

*Warrington.* Your challenge goes to the form and does not lie in voucher to warranty ; for when the tenant vouches to warranty he thereby affirms that the demandant is entitled to an answer to his writ and that the form [of the writ] is good.

*Scott.* When the warrantor has warranted he then first becomes party to the demandant. He then claims to hear the writ read, to the purpose that he may challenge it if, when he has heard it, he find any fault in its form. For, otherwise, the reading of the writ would be useless.

*Mutford.* This writ was challenged in the term of St. Hilary, so that the complainant immediately came to us from Lincoln and told us how his writ had been challenged. Whereupon Sir W.<sup>1</sup> and I went to the Chancery and asked the Bishop's<sup>2</sup> clerks what form they used, and they said that they sometimes used one and sometimes the other. But, for reasons that were stated, a man may vouch to warranty under this writ, and warranty goes to the right, and a warrantor ought to have a term day ; and, seeing that this writ touches the right more nearly than does a writ of novel disseisin, we agreed that the form of the writ was good ; and I tell you that you will never get any other form out of the Chancery in future. Therefore say something else.

<sup>1</sup> *Qu.* William Latimer, the plaintiff.

<sup>2</sup> *Qu.* Burnell, Bishop of Bath and Wells and Lord Chancellor.



*Hert.* pria eid ut prius.

*Met.* quele eid vous freit ele si eid vous fust grante si ele uensist par somons et fust deinz age et priast son age quidez vous qe la assise se targereit pur son noun age quasi diceret non.

*Warr.* nous prioms lassise.

*Hert.* nous prioms eid.

*Met.* agarde qil ne dust eid auer.

*Hert.* nous vous dioms qe assise ne deit estre qe nous vous dioms qe Margarete de C. aele Luce qi heir ele est enfeffa Marmeduk son fiz de mesmes ceux tenemenz a lui et a ses heirs de son corps etc. et obliga lui et ses heirs a la garrantie jugement si assise deiue estre.

*Warr.* donqe grantez vous bien qe Robert frere Luce deuia seisi.

*Scot.* mesme la reson qe vous liereit a la garrantie si nous fussoms etc. mesme la reson vous forbarre de accion jugement.

*Warr.* nous demandoms de la saisine nostre frere qi morust seisi la quele seisine vous ne dedites point et cest un plai de assise ou il couent qe les pointz du bref seiont grantez ou par lassise trieiz et vous ne respondez rien a sa seisine par quoi nous prioms lassise.

*Herle.* si nous fussoms emplede de vous vous vocher<sup>1</sup> agarrantir pur ceo fet il vous couendreit respondre al fet ou conustre et dire chose pur quoi le fet ne vous deit nure ou dedire le fet et donqe nous serroms a issue de plai et si vous ne volez ne lun ne lautre vous nous serretz lie a la garrantie par mesme la reson vous deit il barrer de accion et pur ceo respondez si ceo seit le fet vostre auncestre ou noun.

*Warr.* il ne respondent nient a nostre bref qe voet qe Robert nostre frere morust seisi et il mettent auant point le fet Robert einz le fet un estranger pur quoi il ne diont rien pur quoi lassise deiue remeindre et prioms lassise.

*Hert.* Si nous meissoms auant le fet Robert donc couendreit pleder al assise mais nous sumes en meillour cotel Car nous mettoms auant le fet vostre ael et ne mie le fet un estranger lequel vous ne dedites pas pour quoi nous prioms qe la court le tiegne agrante jugement. Et de autre part si ieo fusse en assise de nouel disseisine qe est le plus tendre nature si couendreit qe vous respondez al fet ou vous nauendrez point al assise de mult plus en ceo cas.

*Malm.* Il me semble qil ne couent une response al fet Car en cas

<sup>1</sup> The text appears to be corrupt here.

*Hartlepool* prayed aid as before.

METINGHAM C.J. What good would aid do you if it were granted you? If Margaret came by summons and were within age and prayed her age, do you think that the assize would stand over by reason of her nonage?—*inferring that it would not.*

*Warrington.* We pray the assize.

*Hartlepool.* We pray aid.

METINGHAM C.J., ruled that he could not have aid.

*Hartlepool.* We tell you that the assize ought not to pass, for we tell you that Margaret of C., grandmother of Lucy, whose heir Lucy is, enfeoffed Marmaduke her son of these same tenements to hold to him and the heirs of his body etc., and bound him and his heirs to warranty. Judgment whether the assize ought to pass.

*Warrington.* By that you grant that Robert, Lucy's brother, died seised.

*Scott.* The same reason that would bind you to warranty if we were etc. bars you from action. Judgment.

*Warrington.* We are claiming by the seisin of our brother who died seised, and that seisin you do not deny, and it is a proper plea to the assize, where the points of the writ must either be admitted or tried by the assize; and as you make no answer to his seisin we pray the assize.

*Herle.* If we were impleaded by you and we vouched to warranty under this deed you would have to answer the deed or to admit it, and to show cause why the deed should not prejudice you, or deny it; and then we should have an issue; and if you would do neither the one nor the other you would be obliged to let us warrant. For a similar reason this deed ought to bar you from action. Therefore answer whether this deed is your ancestor's deed or not.

*Warrington.* They make no answer to our writ which says that our brother Robert died seised; and they do not tender the deed of Robert but the deed of a stranger; and consequently they say naught to hinder the assize, and we pray the assize.

*Hartlepool.* If we were to tender the deed of Robert, we should then have to plead to the assize; but we are in a better position,<sup>1</sup> for we tender the deed of your ancestor, and not the deed of a stranger, and you do not deny it, and therefore we pray that the Court will take it as admitted. Judgment. And further, if this were an assize of novel disseisin, where the rules of pleading are less strict, you would have to answer this deed or you would not get your assize. Much more are you bound to answer it in this case.

*Malmerthorpe.* I submit that we need not answer the deed, for

<sup>1</sup> 'In a better coat' is the exact translation.

ou homme met auant fet le pere par la ou le demandant porte son bref de ael en tiel cas couent qil responde al fet pur ceo qe il counte par my lui mais a contraries ne put mie un mesme lei seruir donc depuis qe nous demandoms de la seisine nostre pere et il mettont auant le fet nostre ael par mi qe nous ne demandoms point il semble qe a ceo fet etc.

*Mutteford.* vous mesmes nous serietz lie a la garrantie vers totes gentz a defendre nostre seisine pur quoi vous ne poez ceux tenemenz hors de nostre seisine recouerir jugement.

*How.* ceo est bref de possession ou il print son title de la seisine son pere donc si son ael apres la mort son pere se ust abatu en les tenemenz et vous ust enfeffe vous ne pourrietz autre estat clamer qe vostre feffour ne auoit mais vers son ael si il fust en tenance Luce auereit bon recouerir coment donqe la volez vous reboter qe ne put estre de meillour condicion qe vostre feffour.

*Scot.* conusez donqe le fet et demouroms en jugement.

*Warr.* nous sumes icy en une assise de mortdancestre ou il couent conustre les pointz de nostre bref ou dedire sil seiont dedites la couent terminer le verdit par assise sil conussont les pointz de nostre bref la couent primerement a dire chose qe chiet si haut en le dreit qe nous ne pouns accion auer et de puis qe nous portoms ceste assise de la seisine nostre pere a quele seisine il ne respondent pas mais nous volent reboter de accion par un respons costein qe rien nest a la possession R. nostre pere pur quoi il ne vnt pas assez dit pur quoi lassise deit remeindre et prioms lassise. Et de altre part put estre qe R. nostre pere enfeffa Marmeduk nostre ael et qe il per cas enfeffa Marmeduk son fiz qe ore est tenant par son garranti et qe Robert purchasa mesmes les tenemenz et morust seisi com nostre bref veut pur quoi il couent qil respondent al estat Robert.

*Howard.* donc vous volez qe nous donoms jugement sur un put estre estre ceo si la partie pledast ausi com vous dites et dedit la seisine Robert donc pledereit il al assize et sil grantast lassise il serreit en peril de perdre la terre auant qil alast de la barre.

*Warr.* tut ust il grante la seisine Robert vncore put il par la quite-clame Robert nous reboter de accion.

*Howard.* si Marmeduk vostre ael ust deuie seisi de ceux tenemenz il ussont descenduz a vous com a plus prochein heir pur quoi il vous



when the demandant brings a writ of ael and the tenant tenders a deed of the demandant's father, then, in such case, the demandant must answer the deed, because he counts through his father ; but the principle is not the same here, since we are claiming on the seisin of our father, while they are tendering the deed of our grandfather through whom we do not claim ; and therefore we submit that we need not answer this deed.

*Mutford.* You would be bound to us by your warranty to defend our seisin against every one, and therefore you cannot recover these tenements out of our seisin. Judgment.

HOWARD J. This is a possessory writ by which the demandant claims seisin by his father's title. If, then, his grandfather had abated himself in the tenements after his father's death and had enfeoffed you, you could have claimed no better estate than your feoffor had ; but against the grandfather, if he were in possession, Lucy would have a good recovery. How, then, do you suppose that you, who can have no better title than your feoffor had, are going to rebut her ?

*Scott.* Then admit the deed and we will abide judgment.

*Warrington.* We are here in an assize of mortdancestor where the points of our writ must either be admitted or denied. If they be denied, the verdict of the assize must determine the truth. If they admit the points of our writ they must then at once allege something of such high nature as to the right as would bar us from our action, and since we bring this assize upon the seisin of our father, and they do not answer that seisin but try to rebut us from our action by a collateral reply that does not go to the possession of Robert our father, they have not shown sufficient cause why this assize should not pass ; and we pray the assize. And again, perhaps Robert our father enfeoffed Marmaduke our grandfather and he enfeoffed his son Marmaduke who is now tenant by his warranty, and Robert purchased the same tenements and died seised, as our writ alleges ; and therefore they ought to answer to Robert's estate.

HOWARD J. Do you suppose, then, that we are going to give judgment upon a ' perhaps ' ? And more than this, if the tenants were to plead as you suggest and deny Robert's seisin, they would be pleading to the assize and so granting the assize, and would be in danger of losing the land before they came to the bar.

*Warrington.* Even though he admitted Robert's seisin he might yet be able to rebut our action by Robert's quitclaim.

HOWARD J. If Marmaduke your grandfather had died seised of these tenements they would have descended to you as the next heir ;

voet reboter de accion par le fet pur quoi vous serrez lie a la garrantie vers totes gentz pur le sanc qest en le dreit.

*Frisk.* si nous responomes al fet et le dedioms et troue fust par enqueste qe ceo fust nient le fet nostre ael nient contresteanst cele enqueste si passereit lassise donc a pleder sur le fet et a defere lur title par my ceo fet ceo seruireit de nient.

HOWARD. ne vous meruellez<sup>1</sup> mie.

*Frisk.* si lenqueste deit pur nous put estre qe lassise dirreit pur eux et issint lenqueste contrarie a lassise quel jugement se freit.

*Toudebi.* nous voloms auer en assise mes qe .iij. pointz si donq nous seioms chace par force de ley a pleder a lur respons qil mettonst auant a nous barrer de nostre demande et del assise apres ceo respons de fet si la seisine deuereit cure en sa nature si aueroms .iiij. pointz la ou auant ne auioms qe .iij. pointz.

*Herl.* est ceo le fet vostre ael qi heir etc. ou noun.

*Warr.* nous ne auoms mie mestier a ceo respondre qe ceo est demande costein auant qe vous eiez respondu a la seisine Robert.

MET. vous entendez qe vous nauez mie mestier a respondre a ceo fet auant qil eionst respondu a la seisine Robert et pur ceo qe vous pledez si couertement de une part et de autre et vous qi estes demandanz deuez haster la besoigne plus qe le tenant agardez vos jours a la .xv. de la Trinite.

a quel jour la protection<sup>2</sup> fust mis auant et allowe.

#### ANON. v. BERKLEY.<sup>3</sup>

Mortdancestre ou excepcion de drein seisi de la seisine le bastard fust alegge et puis vocha le heir mesme celi qi fust hors des .iiij. meers de Engleterre et ne fust pas a ceo resceu mais lassise fust agarde etc.

Johan le Fitz porte le bref de Mortdancestre vers Rauf de Berkley et demanda une carue de terre de la mort son pere.

*Spigurnel.* assise ne deit estre Car cesti bref veut estre porte de la mort le drein seisi et vous dioms qe Robert son pere auoit un fiz G. qe entra en ceux tenemenz et aliena jugement du bref.

*Hunt.* sa seisine ne nous deit nure qe nous ne poums par my lui rien clamer ne il ne auoit nul estat forsqe par son abatement de son tort demene jugement si cel abatement nous deit greuer.

<sup>1</sup> The reading of this word is not quite certain.

<sup>2</sup> See Introduction, p. xvii.

<sup>3</sup> Reported by aa only.

and for this reason they are trying to rebut you from action by the deed which binds you, through your descent, to warranty against everyone ; and that goes to the right.

*Friskeney.* If we were to answer the deed and deny it, and it were found by inquest that it was not our ancestor's deed, the assize would pass, notwithstanding that inquest. Consequently to plead to the deed and to defeat their title based upon that deed would serve no purpose.

HOWARD J. And no wonder !

*Friskeney.* Though the inquest found in our favour the assize might find in theirs, and so the inquest would be opposed to the assize ; and, in that case, what would the judgment be ?

*Toudeby.* We are proposing to aver but three points before the assize. If, then, we are driven by force of law to plead to their reply which they make to bar us from our demand and from the assize, and if, after our answer to the deed, our seisin comes out as of an even stronger nature, we shall have four points where previously we had but three.

*Herle.* Is this the deed of your ancestor whose heir you are or not ?

*Warrington.* It is not incumbent upon us to answer that, which is but a collateral question, until you have replied to Robert's seisin.

METINGHAM C.J. You say that you need not reply to this deed until they have answered Robert's seisin. Since the pleadings on both one side and the other are so dilatory, and you who are demanding ought, rather than the tenant, to expedite matters, take your days in the quindenes of the Trinity.

Upon which day the protection<sup>1</sup> was tendered and allowed.

#### ANON. v. BERKELEY.

Mortdancestor where exception of the latest seisin, based upon the seisin of a bastard, was taken ; and afterwards the tenant vouched this one's heir, who was outside the four seas of England ; but he was not received to do this, and the assize was awarded etc.

John the son brings the writ of mortdancestor upon the death of his father against Ralph of Berkeley, and he demanded one carucate of land.

*Spigurnel.* You ought not to have an assize, for this writ purports to be brought upon the death of the latest seised, and we tell you that Robert, the demandant's father, had a son G. who entered upon those tenements and alienated. Judgment of the writ.

*Hunt.* His seisin ought not to prejudice us, for we can claim nothing through him, and he had no estate save by his own tortious abatement. Judgment if that abatement ought to prejudice us.

<sup>1</sup> See Introduction, p. xvii.



*King.* ad idem sa felonie ne sa quiteclame nous barre nient jugement si sa seisine etc.

*Spigurnel.* G. entra com fitz et heir et de sicom vous auez conu sa seisine jugement du bref.

*Hunt.* sa seisine ne nous deit greuer Car il fust bastard.

*Spigurnel.* ceo est un Mortdancestre et auoms mis auant excepcion de drein seisine et il mettent auant excepcion de bastardie qest en le droit qe ne put pas estre trie par cesti bref jugement etc.

BERR. vous dites qe G. entra com fiz et heir il couent qe vous diez plus prochain heir Robert.

*Spigurnel.* il unt conu lentre et la seisine et a ceo qe il diount qe il fust bastard en tant vnt il conu qil est son fitz mais la bastardie qest en le droit ne put estre trie en cesti bref de possession jugement.

BERR. si lur bref abate par vostre excepcion donc ensuereit qil ussent grante qe G. fust fitz e heir Robert et sil ussont grante ceo il fussont sanz recouerir pur quoi il couent qe vous respondiez outre.

*Spigurnel.* si homme put trier excepcion de bastardie en le Mortdancestre donc ensuereit qe le bref de Mortdancestre est bref de dreit et de mesme la nature qe bref de dreit pur quoi etc.

BERR. si un homme eit .ij. fitz Muleres et le puisne entre apres sa mort et aliene les tenemenz et le eisne fitz porte le Mortdancestre de la mort son pere vers lestrange et il meist en contre lui excepcion de drein seisine de la seisine son frere mulere et le eisne fitz deist qe sa seisine ne li deit nure qe il fust puisne et ne mie plus prochein heir a son pere ceo serreit bon respons de mult plus fort par de cea entre la seisine le bastard pur quoi il couent qe vous diez autre chose.

*Spigurnel.* celui G. alor en Irland et prist femme Atheline et ad un fitz Thomas par noun et lui voche par eid de ceste court et serra somone en Dynelm.

*Hunt.* de sicom vous vochez hors des .iiij. meers de Engleterre etc., jugement.

BERR. ad idem a voche hors des .iiij. meers de Engleterre ou hors du Roialme ne deit estre resceu en tiel cas forsqe en eschaunges. et pur ceo fust lassise agarde etc.

*Kingshemmede ad idem.* Neither his felony nor his quitclaim bars us. Judgment if his seisin etc.

*Spigurnel.* G. entered as son and heir ; and, since you have admitted his seisin, judgment of the writ.

*Hunt.* His seisin ought not to prejudice us, for he was a bastard.

*Spigurnel.* This is a mortdancestor, and we have tendered the exception of latest seised. They have met this by the exception of bastardy, but this goes to the right and cannot be tried under this writ. Judgment etc.

BEREWIK J. You say that G. entered as son and heir. You must say as Robert's next heir.

*Spigurnel.* They have admitted the entry and the seisin, and reply to it by alleging that G. was a bastard. In doing so much they have admitted that G. was Robert's son ; but bastardy, which goes to the right, cannot be tried under this possessory writ. Judgment.

BEREWIK J. If their writ were to abate through your exception it would follow that they had admitted that G. was Robert's son and heir ; but if they were to admit that they would have no recovery. So you must answer over.

*Spigurnel.* If an exception of bastardy could be tried under a mortdancestor, it would follow that a writ of mortdancestor is a writ of right and of the same nature as a writ of right. Wherefore etc.

BEREWIK J. If a man have two legitimate sons and the younger enter after his death and alienate, and the elder bring a mortdancestor upon the death of his father against the stranger, and the latter tender against him an exception of latest seised based upon the seisin of his legitimate brother, and the elder brother then say that such seisin ought not to prejudice him, for his brother was the younger and was not next heir of his father, that would be a good answer. Much more so here, against the seisin of a bastard ; wherefore you must say something else.

*Spigurnel.* While this G. was in Ireland he married one Athelin, and he has a son, Thomas by name, and Ralph vouches him by aid of this Court, and he will be summoned in Durham.<sup>1</sup>

*Hunt.* Since you are vouching beyond the four seas of England etc. Judgment.

BEREWIK J., *ad idem.* Voucher beyond the four seas of England or beyond the realm cannot be received in these circumstances, but only in the case of exchanges.

And the assize was thereupon awarded.

<sup>1</sup> Probably the reporter should have said Dublin.

ANON. v. ANON.<sup>1</sup>

Mortdancestre ou celi en qi le fee et le dreit resposent ne fust mie resceu par la defaute le tenant en plai dassise.

Un Adam porta le mortdancestre vers Johan et Robert et demanda .v. acres de terre vers chequun seueralment.

*Ing.* coment qil porte ceste assise vers Robert il nad qe franc tene-ment et la reversion a nous et a Johane nostre femme et prioms de estre resceu de puis qil fet defaute.

*Hunt.* lassise est agarde par sa defaute pur quoi vous ne deuez estre resceu.

*Ing.* cest un bref de possession com est un bref de ael ou de Cosynage mais en ceo bref si le tenant face defaute celi a qi etc. serra resceu etc.

*Hunt.* chequene defaute en la court le Roi deit estre puniz en plai de terre et de sicom en ceo bref de possession il ny ad nul punissement forsque agarder lassise jugement si apres lassise agarde etc.

*Spigurnel.* celui qi prie destre resceu il couent qil viegne en propre persone mais ore nest pas vostre femme en court pur quoi etc.

*Ing.* respond en dreit de la tenance Johan et dit qe Johane sa femme fust ioint feffe et nient nomme en le bref jugement du bref et le bref se abati en dreit de Johan en droit de Robert pria ut prius.

*Spigurnel.* cele auantage destre resceu est done par statut<sup>2</sup> quant le tenant fet defaute et les tenemenz sont en point de perdre mais en plai de assise nostre jugement ne se fra mie solom la defaute mais solom le verdit de lassise pur quoi vous ne deuez estre resceu et demandoms lassise.

ANON. v. ANON.<sup>3</sup>

Un autiel cas auynt par la ou la partie fust de rien tenant et lassise porte vers lui et agarde par la defaute et celi en qi person le fee et le dreit et le franc tenement fust vint auant jugement rendu et pria se estre resceu et ne fust mie resceu par la reson auantdit etc.

TANK v. KADY.<sup>4</sup>

Mortdancestre ou la feille mulere qi porta le Mortdancestre vers son frere qi nasquit auant esposailles ne prist rien etc.

Johan Tank et Johane sa femme porterent une assise de Mortdan-cestre vers Adam Kady de la mort Richard son pere.

<sup>1</sup> Reported by *aa* only. <sup>2</sup> Statute of Westminster II, cap. iii. <sup>3</sup> Reported by *aa* only. <sup>4</sup> Reported by *aa* only.



## ANON. v. ANON.

Mortdancestor where he in whom the fee and right reposed was not received in a plea of assize through the default of the tenant.

One Adam brought the mortdancestor against John and Robert, and demanded five acres of land against each of them severally.

*Ingham.* Since he brings this assize against Robert, who has naught but a freehold, and the reversion belongs to us and to Joan our wife, we pray to be received, as Robert is in default.

*Hunt.* The assize is awarded through his default, and so you ought not to be received.

*Ingham.* This is a possessory writ like a writ of ael or of cosinage ; yet, under those writs, if a tenant make default, he to whom etc. will be received etc.

*Hunt.* Every default in a plea of land in the King's Court ought to be punished, and since under this possessory writ there is no other punishment possible except the awarding of the assize, judgment whether after assize awarded etc.

*Spigurnel.* Everyone who prays to be received ought to come in person, but your wife is not in court ; wherefore etc.

*Ingham* answers in respect of John's tenancy and says that Joan his wife was jointly enfeoffed with him and is not named in the writ. Judgment of the writ. And the writ was abated so far as John was concerned. In respect of Robert he prayed as before.

*Spigurnel.* This right of being received is given by statute<sup>1</sup> when the tenant makes default and the tenements are in peril of being lost ; but in a plea of assize judgment will not be given of us in regard to the default, but in regard to the verdict of the assize ; wherefore you ought not to be received, and we pray the assize.

## ANON. v. ANON.

A similar case came up for hearing where the tenant held naught, and the assize was brought against him and awarded through his default ; and he in whose person the fee and the right and the freehold reposed came before judgment given and prayed to be received ; but he was not received for the reason before stated etc.

## TANK v. KADY.

Mortdancestor where a legitimate daughter who brought the mortdancestor against her brother born out of wedlock took naught etc.

John Tank and Joan his wife brought an assize of mortdancestor against Adam Kady upon the death of Richard, Joan's father.

<sup>1</sup> Statute of Westminster II, cap. iii.

*Spigurnel.* assise ne deit estre qe nous sumes le fitz Richard et eisne et entrames com fitz et heir.

*Ewe.* il est tut estrange a Richard prest etc.

*Spigurnel.* fetes nous estrange et trouez nous autre pere qe Richard.

*MET.* vous dirrez qi fitz il est si vous lui volez estranger.

*Ewe.* il est fitz al poeple.

*MET.* donc il est vostre fitz.

*Spigurnel.* par la ne passerez mie si vous ne diez qi fitz il est.

*MET.* qi fitz est Adam.

*Ewe.* tut seit il fitz Richard il est tut estrange quant al heritage et a nous Car il fust engendre deuant les esposailles viij. anz.

*Spigurnel.* de sicom il conussont qe Adam est fitz Richard et Adam est madle et Johane femele jugement de la conusance.

*MET.* vous ne poez dedire qe Adam nest le fitz Richard.

*Johan.* noun.

*MET.* pur ceo qe ceste chose touche matremoine et le dreit ne put estre trie par bref de possession purquoi agarde la court qe vous ne preignez rien par vostre bref etc.

#### NOUN CLEIM.

#### ANON. v. ANON.<sup>1</sup>

En un plaie dit fust qe fin se leua<sup>2</sup> sur rendre de mesme les tenemenz ou le demandant fust <sup>3</sup>de plein<sup>4</sup> age de bone memorie deinz les iiij. mers<sup>5</sup> dengleterre et hors de prison et ne mist pas son cleyme denz lan et le ior apres qe la fin se leua iugement etc. a ceo fut dit qe sa parcenere Royse <sup>6</sup>par noun<sup>7</sup> a teu temps qe la fin se leva fust deins age et cest un droit entier en les ij. iugement si le non cleyme nous deue barrer. Et estre ceo si a teu temps vousissent aver porte lor bref de droit durant le nounage lun<sup>8</sup> il ne serrount respondu et par consequent nient barre par noun cleyme qest en lieu daccioun et sic ad iudicium et puis accorderent etc. unde questio.

<sup>1</sup> Reported by  $\eta$  and  $\theta$ . Text from  $\theta$  collated with  $\eta$ . <sup>2</sup>  $\eta$  adds le.  
<sup>3-4</sup> deinz  $\eta$ . <sup>5</sup> from  $\eta$ ;  $\theta$  has meis. <sup>6-7</sup>  $\eta$  omits. <sup>8</sup> lautre  $\eta$ .

*Spigurnel.* The assize ought not to pass, for we are the son and elder born of Richard, and we entered as his son and heir.

*Ewe.* He is a complete stranger to Richard. Ready etc.

*Spigurnel.* If you make us a stranger find us another father than Richard.

METINGHAM C.J. You must say whose son he is if you want to allege that he is a stranger.

*Ewe.* He is anybody's son.

METINGHAM C.J. Then he is your son.

*Spigurnel.* You will not get to what you want unless you say whose son he is.

METINGHAM C.J. Whose son is Adam?

*Ewe.* Though he were Richard's son he is a complete stranger in respect of the inheritance and of us, for he was begotten eight years before the marriage.

*Spigurnel.* Since they admit Adam to be Richard's son, and Adam is a male and Joan a female, judgment of the admission.

METINGHAM C.J. You do not deny that Adam is Richard's son?

*John.* No.

METINGHAM C.J. Seeing that this matter is concerned with marriage, and that the right cannot be tried under a possessory writ, the Court gives judgment that you take naught by your writ etc.

#### NON-CLAIM.

#### ANON. v. ANON.

In a plea it was alleged that a fine had been levied upon the surrender of the tenements in issue. The demandant was of full age and sound mind, within the four seas of England and not in prison, and had not made his claim within a year and a day of the execution of the fine. Judgment etc. To this it was answered that his parcener, Rose by name, was within age at the time the fine was levied; and the undivided right reposes in the two of them. Judgment whether the failure to claim ought to bar us. And, further, if the two had wanted to bring their writ of right within the statutory period, they would not have been answered during the nonage of one of them; consequently the demandants are not barred by the failure to claim, seeing that such claim would have been of the nature of an action. And so to judgment. But afterwards the parties came to a settlement etc.; and so the question remains open.



NOTA.<sup>1</sup>

Nota de noun  
Cleim.


Nota qe en une fin qe se leva en prejudice de parceners de deus<sup>2</sup> parceners lun fut deinz age il ne furent mie barrez par noun cleim deinz lan et le jour pur ceo qe le dreit est un et serrount<sup>3</sup> touz escuses par le nounage lun quia ius est unum et comune unde lex iustius est dimittere nocentem inpunitum quam innocentem punire et ceo le quel qe la fin se leve sour rendre qe barre privetz et estraunges ou sour relees et quiteclame qe ne barrent mes privez : ut in itinere HERVI DE STANTONE<sup>4</sup> apud Cantuariam<sup>5</sup> etc.

## NOVEL DISSEISINE.

TERRY v. RONEWELL.<sup>6</sup>I.<sup>7</sup>

Novel disseisine ou tenemenz furent lessez a terme de vie a un H. et A. sa femme : la femme devia : le baron aliena : le lessour aperceut la alienacioun et entra : cely a qe lalienacioun se fist luy osta : il porta lassise et recoveri.

Assisa venit recognitura si Iohannes<sup>8</sup> Ronwelle<sup>9</sup> Clemens et Thomas fratres eius<sup>10</sup> et alii<sup>10</sup> iniuste etc. disseisiuerunt Robertum Terri et Beatricem uxorem ejus de libero tenemento suo in Cherche post primam etc. et unde queruntur quod disseisiuerunt eos de uno mesuagio quatuor acris terre et una acra bosci cum pertinenciis etc.

Et Iohannes de Ronewelle venit et alii non venerunt set idem Iohannes respondet pro eiis tanquam eorum balliuis. Et dicit quod ipsi nullam eiis fecerunt dissesinam seu iniuriam et de hoc<sup>11</sup> ponunt eos<sup>11</sup> super assisam. Et idem Iohannes de Ronewelle pro se ipso respondet et dicit quod nichil habet in predictis tenementis etc.  Dicit enim quod Iohannes Payn tenet predicta tenementa ad terminum vite sue ex dimissione predicti Roberti Terry et tenuit die impetracionis brevis scilicet xxiiij. die Ianuarii<sup>12</sup> anno domini Regis nunc sexto qui quidem Iohannes Payn non nominatur in breui et petit iudicium de breui.

<sup>1</sup> Note from *a*, *aa* and *β*. Text from *a* collated with *β*. <sup>2</sup> *queus β*.  
<sup>3</sup> *sount β*. <sup>4-5</sup> *β omits*. <sup>6</sup> Reported by *a*, *aa*, *β*, *γ*, *γγ*, *δ*, *ε*, *η*, *κ*, *κκ* and *λ*.  
Names of the parties from E.R. <sup>7</sup> Text of (I) from *a* collated with *β* and *λ*,  
and with E.R. Head note from *aa* and *β*. <sup>8</sup> *λ adds de*. <sup>9</sup> Ronewelle *a*.  
<sup>10-10</sup> Willelmus de Wyngham *λ*. <sup>11-11</sup> *ponit se β*. <sup>12</sup> Februarii *λ*.

## NOTE.

Note that where a fine was levied in prejudice of parceners, one of two parceners was within age; and they were not barred by the failure to claim within the year and the day because the right was an undivided one and both parceners were excused by reason of the nonage of one of them; for the right being undivided and common to them both it is more equitable that the law should let the party in fault go unpunished than that it should punish the innocent one. And it is the same whether the fine be levied upon a surrender, which bars both privies and strangers, or upon a release and quitclaim, which bars privies only. By HERVEY of STAUNTON J., in the Eyre at Canterbury etc.

Note as to failure claim.

## NOVEL DISSEISIN.

TERRY *v.* RONWELL.

## I.

Novel disseisin where the tenements were leased to one H. and A. his wife for the term of their lives. The wife died and the husband alienated. Upon discovering the alienation the lessor entered. The alienee ejected him. The lessor brought the assize and recovered.

The assize came to recognise whether John of Ronwell, Clement and Thomas his brothers, and others unjustly disseised Robert Terry and Beatrice his wife of their freehold in Chart after the first [voyage of King Henry III. to Gascony]<sup>1</sup> in respect of which they complain that the aforesaid disseised them of a messuage, of four acres of land and one acre of wood, together with the appurtenances etc.

And John of Ronwell came and the others did not come, but John answers on their behalf as their bailiff. And he says that they have done no disseisin nor wrong, and of this they put themselves upon the assize. And the same John of Ronwell answers on his own behalf and says that he has naught in the aforesaid tenements etc. For he says that John Payn holds the aforesaid tenements for the term of his life by the lease of the aforesaid Robert Terry and that he held them upon the day of the purchasing of the writ, to wit, upon the twenty-fourth day of January in the sixth year of our present lord the king; which said John Payn is not named in the writ; and he asks judgment of the writ.

<sup>1</sup> This was the limitation within place. See Statute of Westminster I, which the disseisin must have taken cap. xxxix.

Et predictus Robertus et Beatrix dicunt quod ipsi de seisina sua dimiserunt predicta tenementa cum pertinenciis<sup>1</sup> predicto Iohanni Pain et Idonie uxori eius ad terminum vite eorundem que quidem Idonea obiit et predictus Iohannes Pain tenuit<sup>2</sup> predicta tenementa in forma predicta et<sup>3</sup> ea alienauit in feodum<sup>4</sup> predicto Iohanni de Ronewelle per quod predicti Robertus et Beatrix recenter posuerunt se in predictis tenementis que eiis revertere debuerunt ut predictum est et seisiti fuerunt quousque predictus Iohannes de Ronewelle et alii etc. eos iniuste etc.

Iuratores dicunt quod predictus Iohannes Pain tenuit predicta tenementa ad terminum vite sue ex dimissione predictorum Roberti et Beatricis etc. qui quidem Iohannes predicta tenementa alienauit Iohanni de Ronewelle et heredibus suis in perpetuum et<sup>5</sup> hoc factum suum probat (*sic*) hominibus illius parochii<sup>6</sup> notificauit ratificandum. Et predicti Robertus et Beatrix scientes illam alienacionem in feodum<sup>7</sup> factam ad eorum exheredacionem<sup>8</sup> recenter super factum predicta tenementa intrauerunt et seisiti fuerunt<sup>9</sup> quousque predicti Iohannes de Ronewelle et omnes alii nominati in breui preter Willelmum de R.<sup>10</sup> et Iohannem Euerad<sup>11</sup> vi et armis ipsos disseisiuerunt sicut queruntur.

Et ideo consideratum est quod predicti Robertus et Beatrix recuperent seisinam suam de predictis tenementis<sup>12</sup> per visum recognitorum assise et dampna sua que taxantur ad xxv. s. et quod Iohannes de R. et alii disseisitores capiantur. Et predicti Robertus et Beatrix in misericordia pro falso clamore versus alios.

## II.<sup>13</sup>

Novel  
disseisine.

<sup>14</sup>Robert Tonya<sup>15</sup> et Beatrice<sup>16</sup> sa femme portent un assise de novel disseisine vers Jon de Ronewell et <sup>17</sup>plusours autres<sup>18</sup> et mist en <sup>19</sup>sa plainte<sup>20</sup> etc. j. mies iiij.<sup>21</sup> acres de terre et j. acre de boys ove les apurtenances.<sup>22</sup>

*Stonore.*<sup>23</sup> touz forpris Jon vous respondent par Bailif <sup>24</sup>e vous dient<sup>25</sup> qil nount rien etc. ne nul tort<sup>26</sup> etc. Jon vous dit qe il nad rien

<sup>1</sup> *λ adds reddendo.* <sup>2</sup> *from β; tenens a.* <sup>3</sup> *from β; a omits.* <sup>4</sup> *feodo β.*  
<sup>5-9</sup> dicunt quod postea factum suum predictum notificauit par breue hominibus illius parochie affirmando et ratificando factum illud. Et dicunt quod predictus Robertus perpendens predictam alienacionem factam ad exheredacionem ipsorum Roberti et Beatricis recenter super facto illo nomine suo et ipsius Beatricis posuit se in predictis tenementis et inde fuit in seisina E.R.  
<sup>7</sup> *feodo β.* <sup>8</sup> *alienacionem β.* <sup>10</sup> *Kyngham λ.* <sup>11</sup> *Everarde β, Cronad λ.*  
<sup>12</sup> *from β; a omits.* <sup>13</sup> *Text of (II) from γ collated with δ, ε, and κκ.* <sup>14-15</sup> *un Richard Terry κκ.* <sup>15</sup> *Tyrry δ; Terry ε.* <sup>16</sup> *from ε; B, γ.* <sup>17-22</sup> *C.*  
<sup>19-20</sup> *son frere et autres etc. et sei pleindrent estre disseisis de certains tenemenz en C. touz nomes en bref κκ.* <sup>17-20</sup> *altres etc. e mist ε.* <sup>18</sup> *δ adds nomez en bref.*  
<sup>19-20</sup> *vewe et en lour plainte δ.* <sup>21</sup> *v. δ.* <sup>22</sup> *δ adds en C.* <sup>23</sup> *κκ omits.*  
<sup>24-25</sup> *from ε.* <sup>26</sup> *δ adds ne rienz ne clayment.*



And the aforesaid Robert and Beatrice say that out of their seisin they demised the aforesaid tenements together with the appurtenances to the aforesaid John Payn and Idoine his wife for the term of their lives, the which Idoine died and the aforesaid John Payn held the aforesaid tenements after the form aforesaid and alienated them in fee to the aforesaid John of Ronwell; wherefore the aforesaid Robert and Beatrice straightway entered upon the aforesaid tenements, which ought to revert to them as is aforesaid, and they were seised of them until the aforesaid John of Ronwell and the others unjustly disseised them of them etc.

The jurors say that the aforesaid John Payn held the aforesaid tenements for the term of his life by the lease of the aforesaid Robert and Beatrice etc., which said John alienated the said tenements to John of Ronwell and his heirs for ever, and this his deed he published to the inhabitants of that parish and confirmed. And the aforesaid Robert and Beatrice having cognizance of that alienation in fee made to their disinherison straightway after the fact, entered the aforesaid tenements and were seised of them until the aforesaid John of Ronwell and all the others named in the writ, except William of R. and John Everard, disseised them by force and arms as they complain.

And judgment is thereupon given that the aforesaid Robert and Beatrice recover their seisin of the aforesaid tenements by view of the recognitors of the assize, and their damages, which are assessed at twenty-five shillings; and that John of Ronwell and the other disseisors be arrested. And the aforesaid Robert and Beatrice are to be in mercy for their false claim against the others.

## II.

Robert Tonya and Beatrice his wife brought an assize of novel disseisin against John of Ronwell and several others and laid in their complaint etc. 'one messuage, four acres of land and one acre of wood, together with the appurtenances.'

Novel  
disseisin.

*Stonore.* All except John answer you by their bailiff and tell you that they have naught etc. and have done no wrong etc. John tells

en le fraunktenement qar il vous dit qe mesme ceus Robert et B. lesserent mesme les tenementz a Jon Payn et a Idoyne sa femme a terme de lour deux vyes et Idoyne est morte <sup>1</sup>et pur ceo qe Jon Payn est feble et ne peut se eyder lessa<sup>2</sup> ceus tenementz a cesti Jon de Ronewell<sup>3</sup> a garder <sup>4</sup>com a son prochein amy ency nad J. de Ronewell rien en le fraunktenement einz Jon Payn nient nome en le bref<sup>5</sup> jugement <sup>6</sup>du bref<sup>7</sup> etc.

*Westcote.* verite est qe Jon Peyn tynt ceus tenementz de nostre lees a terme de sa vye etc. ut supra mes <sup>8</sup>nous vous dioms qe<sup>8</sup> mesme cely Jon Payne <sup>9</sup>aliena mesme ceus tenementz a mesme cesti J. de Ronewelle en fee par qey mesme cesti<sup>9</sup> Robert et B. aperceurent<sup>10</sup> lour desheritaunce entrèrent frechement et seisi furent taunt qe mesme cesti J. de Ronewell et les autres le disseisirent etc. et prioms lassise.

<sup>11</sup>*Stonore*<sup>12</sup> Jon est ici en propre persone et descleyme<sup>13</sup> en le fraunktenement<sup>14</sup> par qey nentendoms mie qe encountre son desclamer peusez fraunktenement en sa persone affermer ou al assise atendre.

<sup>15</sup>*Westcote* en cas dassise par desclamer ne poez del assise estourtre. et a ceo sey acorderent les justices et demanderent lassise et <sup>16</sup>*Nota* qe<sup>16</sup>

*Toudeby* dit qe *Stonore* pouz meuz aver plede daver dit qil nust fet nul tort etc. qar il dit qe par son contrepleder si pout il estre tenuz disseisor.

*Westcote* ad idem verite est si nostre<sup>17</sup> title soit trove verroi etc.

Lassise<sup>18</sup> fust demande qe vynt et<sup>18</sup> dit qe Jon Payn tynt ceus tenementz a terme de sa vye etc. del lees Robert Tony et B. sa femme le quel Jon aliena les tenementz en fee a Jon de Ronewelle saunz chartre par qey Robert Tony entra mesme le jour freschement apres le alienacioun en fee etc.<sup>19</sup>

*SPIGURNEL.* Gaunt Robert entra ceo ne peut estre fors qe en noun sa femme par qey pur ceo qe trove est qe Robert et B. entrèrent par

<sup>1-5</sup> issint qe les avant ditz R. et B. voleient auer ouste lauant dit Johan Paine et il com proschein amy lui fust en eide et autre estat ne cleimeit en le frank tenement ne ne fist iour de bref purchase et nient nome en le bref κκ. <sup>1-2</sup> Johan fut auncien homme et ne pout my sey meme eyder pur quei il bailla δ. <sup>3</sup> δ adds son fiz. <sup>4-5</sup> et issint ne tient il δ. <sup>6-7</sup> from ε. <sup>8-9</sup> from ε. <sup>10-9</sup> tenant a terme de vie enfeffa Johan de R. de ceux tenemenz a ly et a ses heirs en fee simple δ. <sup>10</sup> aperceyvaunt ε. <sup>11-13</sup> STANTONE Et vous ne auerez pas pusqe Johan descleim nettement en le franctenement. *Wescote.* Issint ensuereit qe quant homme verroit qe lassise passereit encontre ly il desclemereit en le franc tenement pour escourtir des damages. *SPIGURNEL.* Fet venir lassise. Lassise vint et δ. <sup>12</sup> Stanh. κκ. <sup>13</sup> from ε; defend cleyne γ. <sup>14</sup> κκ adds et vous ad done un autre tenant qi nest pas nome etc. <sup>15-10</sup> et nekedent lassise fust agarde qi dit qe Jon P. tient a terme de vie del lees les auantdits R. et B. et qe J. P. auoit aliene en fee sanz chartre a J. de R. et qe R. et B. entrèrent meme le iour et furent seisis tanqe les autres a force et as armes les disseisirent etc. Ideo ad iudicium κκ. <sup>16-10</sup> ε omits. <sup>17</sup> from ε; mesme γ. <sup>18-13</sup> ε omits.

you that he has naught in the freehold, for he tells you that these same Robert and Beatrice leased these same tenements to John Payn and Idoine his wife for the term of their two lives, and that Idoine is dead ; and John Payn, because he was feeble and unable to do aught for himself, leased these tenements to this John of Ronwell to hold in ward as his next friend ; wherefore John of Ronwell has naught in the freehold, which is in John Payn who is not named in the writ. Judgment of the writ etc.

*Westcote.* The truth is that John Payn holds these tenements for the term of his life by our lease etc. *as above* ; but we tell you that this same John Payn alienated these same tenements to this same John of Ronwell in fee ; and thereupon these same Robert and Beatrice, perceiving that they had been disinherited, straightway entered and remained seised until this same John of Ronwell and the others disseised them etc. and we pray the assize.

*Stonore.* John is here in person and disclaims [all interest] in the freehold, and consequently we do not see how, in face of his disclaimer, you can affirm a freehold in his person or get the assize.

*Westcote.* Where an assize is prayed you cannot oust us from the assize by disclaiming.

And the Justices agreed. And they demanded the assize ; and note that—

*Toudeby* said that it would have been better pleading if *Stonore* had said that he had done no wrong etc., for he said that by his counter-plea he might be found a disseisor.

*Westcote ad idem.* That is true, if our title is found to be good etc.

The assize was awarded<sup>1</sup> and came and said that John Payn held these tenements for the term of his life by the lease of Robert Tony and Beatrice his wife ; and that the said John alienated the tenements in fee to John of Ronwell without a charter ; and that thereupon Robert Tony entered at once upon the very day of the alienation in fee etc.

SPIGURNEL J. Robert's entry could only be in his wife's name ; and therefore, since it has been found that Robert and Beatrice entered

<sup>1</sup> The *demande* of the text is probably a slip for *agarde*.



reson de alienacioun fet a lour desheritaunce et seisi furent taunt qil furent disseisi si agard <sup>1</sup>la court<sup>2</sup> qil recoeverent lour seisine etc. et lour damages etc.

<sup>3</sup>Nota par SPIGURNEL Qe si home soit disseisi et les disseissours enportent des chateux as disseisse saver blees en tas vessele draps et similia et il recouere par assise la chose mis en plainte et ses damages ceux damages naueront mye relacioun si noun a la vesture de frank tenement saver blees cresceantz destruction de bois et des meses et similia et as issues des choses mises en veue en le men temps issint nepourquant qil put des autres choses aprimes dites enportes auer son recouerir par bref de trespas et il serra resceu et a ceo acorderent touz les Justices.<sup>4</sup>

III.<sup>5</sup>

Novel  
disseisine.

Robert torri et B. sa femme porterunt la novel disseisin vers Johan de Ronewelle et autres nomez en le bref dun mes et iiij. acres de tere etc. toutz estre Johan vyndrent par baillif et diseont qil nauoyent rien etc. Johan vynt en propre persone et demanda oy de la patent.

*Westcote* tut ne vssum<sup>6</sup> patent les Justices aueyent bien power de prendre assise qil sunt Justices a toutz pleez pur quei il ne couent poynt mostrer patent.

*Stonore* sil fut variance entre le patent et le clos ieo abatereri le bref. GOLDINGTON dit qe noun.

*Westcote.* Jay veu lx.<sup>7</sup> assises en eyre estre pris saunz patent.

pus mys avant la patent de gree le qel voleit qe lassise fut arrame deuant Sire Johan de frissenfeld<sup>8</sup> et William de Goldyntone et pur ceo qe dit fut par ascouns gens qe Sire Johan<sup>9</sup> fut mort—

*Stonore* desicum ceste assise fut arrame deuant Sire Johan de F. gest mort <sup>10</sup>il semble qe le bref est a tere.<sup>11</sup>

E *Toudeby* et alii dixerunt <sup>12</sup>qe le bref ne se abatera mye mes qe issi fut.<sup>13</sup>

E *Stonore* pur ceo qil ne sauoit qel il fut mort ou en vye wayua cel et dit outre pour toutz excepte Johan de R. qil nauoyent rien en le etc. neo nul tort etc. E pur Johan de R. qe fut la en propre persone dit qil nauoyt rien en le franctenement neo auoit iour de bref purchace iuge-

<sup>1-2</sup> from ε; etc. γ.

<sup>3-4</sup> from κκ.

<sup>5</sup> Text of (III) from γγ collated

with κ. <sup>6</sup> eussoms κ.

<sup>7</sup> xl. κ.

<sup>8</sup> Fresing κ.

<sup>9</sup> κ adds de Fresing.

<sup>10-11</sup> et ne suie deuant etc κ.

<sup>12-13</sup> quod non quia breuis non quassabitur et ita

fuit κ.

by reason of the alienation of their heritage and were seised until they were disseised, the Court gives judgment that they recover their seisin etc. and their damages etc.

Note that it was said by SPIGURNEL J. that if a man be disseised and the disseisors carry away the chattels of the disseisee, to wit, garnered corn, household utensils, clothes and similar things, and the disseisee recover by assize that which he has laid in his plaint and his damages, the damages shall have relation only to the vesture of the freehold, that is to say, to standing corn, the destruction of woods and messuages and the like and to the mesne profits of what was included in the view; but, notwithstanding this, the disseisee may have his recovery by writ of trespass in respect of the carrying away of the things first named, and he will be received thereto. And with this all the Justices agreed.

### III.

Robert Terry and Beatrice his wife brought the novel disseisin Novel disseisin. against John of Ronwell and others named in the writ in respect of a messuage and four acres of land etc., all of whom, with the exception of John, appeared by bailiff and said that they had naught etc. John came in person and prayed to hear the letter patent<sup>1</sup> read.

*Westcote.* Even though we had no patent the Justices have full power to take the assize, for they are Justices [appointed to hear] all pleas; wherefore we need not show our patent.

*Stonore.* If there be a variance between the patent and the close letters I can abate the writ.

GOLDINGTON J., said that he could not.

*Westcote.* I have seen sixty assizes taken in Eyre without a patent.

Afterwards he consented to produce the patent, which recited that the assize was arraigned before Sir John of Frissingfield and William of Goldington; and because it was said by some that Sir John was dead—

*Stonore.* Since this assize was arraigned before Sir John of F. and he is dead, it seems that the writ is void.

And *Toudeby* and others said that the writ would not abate even if that were the case.<sup>2</sup>

And *Stonore*, because he did not know whether he was dead or alive, waived this objection, and pleaded over on behalf of all, except John of Ronwell, that they had nothing in the tenements and had done no wrong etc. And on behalf of John of Ronwell, who was present in person, he said that he had naught in the freehold nor had aught upon

<sup>1</sup> i.e. the commission to the Justices to take the assize.

<sup>2</sup> i.e. that Sir John was dead.

ment du bref et dit coment R. Torry et B. sa femme lesserent ceux tenementz a Johan payn et ydoyne sa femme a terme de lour ij. vies ydoyne est mort E Johan fut de noun power et vnqore est et Johan de R. prist les tenementz cum en noun de garde cum plus procheyn amy a Johan Payn a garder al oes celi Johan Payn et issi est Johan tenant prest etc.

*Westcote* bien est verite qe Johan et ydoyne furent tenantz a terme de lor deuz vies du lees R. et B. et Johan apres la mort ydoyne aliena a Johan de R. en fee en desheritesoun R. et B. pur quei il entrerent cum bien lour lust et seisi furent tantqe dissieisi par my ceux nomez en bref et prioms lassise.

*Stonore* ut supra.

*Westcote* nous prioms qe son response soyt entree qil ad desclame en le franc tenement et est en propre persone et atut le meyns il nous ad grante la Reuercion.

#### IV.<sup>1</sup>

Assise nouel disseisine par alienacion de tenant a terme de vie fete en fee.

Robert Turry et Beatrice sa femme porterent une assise de novel disseisine vers Johan de Conewell.

*Stonore.* Johan vous dit qil nad rien sinon com gardien un Robert Dauby nient nome jugement du bref.

*Wescote.* tenant et disseisour et prioms lassise.

*Stonore.* Robert Dauby tenant ceus tenemenz a terme de sa vie de son lees par meme cet escrit et issit est il enz sanz tort etc.

*Wescote.* bien est verite qe nous lessames etc. a ly et a une Maude sa feme a terme de lour .ij. vies la qele Maud morust apres qi mort il aliena lez tenemenz a Johan de Conewell en fee a sa desheritance et il freschement entra et seisi fut si la qe etc. et prioms lassise.

Lassise dit qe la alienacion sit en desheritance pur quei agarde fut qil recoueri. Et il prierent qe les chateux troues en memes les tenemenz fussent mis en damages.

SPIGURNEL dit qil ne recouereit pas damages sinon mesons estrippes et boys et issues de la terre per iudicium etc. mes suffiseit prengner son bref de trespas.

<sup>1</sup> Text of (IV) from 7.



the day when the writ was purchased. Judgment of the writ. And he said that Robert Terry and Beatrice his wife leased these tenements to John Payn and Idoine his wife for the term of their two lives. Idoine is dead, and John was incapable and yet is, and John of Ronwell took the tenements by way of guardian as next friend to John Payn to manage them for the use of the same John Payn ; and consequently John Payn is tenant. Ready etc.

*Westcote.* The truth is that John and Idoine were tenants for the term of their two lives by the lease of Robert and Beatrice, and that John, after Idoine's death, leased to John of Ronwell in fee in disinheriton of Robert and Beatrice, who thereupon entered, as they were fully entitled to do, and were seised until they were disseised by those named in the writ ; and we pray the assize.

*Stonore as above.*

*Westcote.* We pray that his answer may be entered, for he has disclaimed in respect of the freehold and is here in person, and he has at least admitted that we have the reversion.

#### IV.

Assize of novel disseisin by alienation in fee by the life tenant.

Robert Terry and Beatrice his wife brought an assize of novel disseisin against John of Conewell.

*Stonore.* John tells you that he has naught except as guardian of one Robert Davy who is not named [in the writ].

*Westcote.* He is tenant and disseisor, and we pray the assize.

*Stonore.* Robert Davy is tenant for life of these tenements by their lease, granted by this same writing, and so he is rightfully in possession etc.

*Westcote.* The truth is that we leased etc. to him and to one Maud his wife for the term of their two lives. The which Maud died, and after her death he alienated the tenements to John of Conewell in fee to the disinheriton of Robert and Beatrice, who straightway entered and were seised until etc. and we pray the assize.

The assize said that the alienation was in disinheriton ; wherefore it was adjudged that Robert and Beatrice recover. And they prayed that, in assessing damages, regard should be had to the chattels found upon the tenements.

SPIGURNEL J. said that they could recover damages by judgment only in respect of houses, growing crops and woods and issues of the land etc. but that they might [in respect of other things] sue out a writ of trespass.

## STUREY v. COBEHAM.

## Note from the Eyre Roll.

The issue before the assize was :—si Alicia que fuit uxor Thome de Wrotham Galfridus filius Thome de Wrotham Magister Iacobus de Cobeham Thomas Tonk et Gilbertus Shonk iniuste etc. disseisiuit Robertum de Sturey de libero tenemento suo in Esshe iuxta Sandwicum post primam etc. Et unde queritur quod disseisiuerunt eum de viginti et sex solidatis et octo denariis redditus cum pertinenciis.

Predictus Magister Iacobus per Ballium suum venit. Et alii non veniunt etc. Et predictus Ballius dicit pro predicto Iacobo quod non debet ad hoc breue respondere etc. Dicit enim quod predicta tenementa posita in visu etc. et unde predictus Redditus prouenit fuerunt in seisina cuiusdam Iohannis de Gosehale qui tenebatur predicto Iacobo in quadam summa pecunie per recognicionem factam per Statutum de Mercatoribus etc. Et que tenementa eidem Iacobo liberata fuerunt tenenda secundum formam eiusdem Statuti etc. Et dicit quod reuersio eorundem tenementorum spectat ad quendam Henricum filium et heredem predicti Iohannis de Gosehale qui non nominatur in breui Et petit iudicium de breui etc.

Et Robertus non potest hoc dedicere. Ideo consideratum est quod predicti Iacobus et alii inde sine die et Robertus nichil capiat per breue istud set sit in misericordia pro falso clamore etc.

Robert now issues a new writ, joining Henry of Gosshall as a defendant and dropping out Gilbert Shonk.

On the day appointed for the trial none of the defendants appears and the Court orders the assize to proceed *per defaltam*.

One Durandus of Widmerepool answers on behalf of Master James 'tanquam eius Ballius.' His plea was :—quod predictus Robertus iniuste tulit assisam istam versus eum quia dicit quod tenementa illa fuerunt in seisina cuiusdam Iohannis de Gosehalle militis qui quidem Iohannes nuper coram Iohanne le Blund nuper maiore Ciuitatis Regalis Londonii et Henrico de Leycestre Clerico ad recogniciones debitorum apud Londinium accipiendo deputato recognouit se debere predicto Iacobo ducentas et quadraginta libras certis terminis soluendas etc. nondum preteritis etc. virtute cuius recognicionis predicta tenementa postmodum per preceptum domini Regis per breue suum eidem Iacobo liberata fuerunt tenenda ut librum tenementum etc. quousque etc. unde dicit quod predictus Iacobus intrauit predicta tenementa tenenda in forma predicta absque aliqua iniuria seu disseisina predicto Roberto de predicto redditu in hac parte facienda etc.

Robert's replication, upon which issue was joined, was :—quod predicta tenementa modo posita in visu etc. scilicet manerium de Gosehalle cum pertinenciis fuit in seisina predicti Iohannis de Gosehalle ut ius ipsius Iohannis qui diu ante recognicionem predictam dedit et concessit eidem Roberto pre-

<sup>1</sup> Reported by *a*, *aa*, *β*, *γ*, *γγ*, *δ* (twice), *ε*, *ζ*, *η*, *θ*, *κ*, *κκ* and *λ*; *γγ*, *θ* and *κ* giving only an extract from the E.R. Names of the parties from E.R.

STURRY *v.* COBHAM.Note from the Eyre Roll—*continued.*

dictum redditum viginti et sex solidorum et octo denariorum percipiendum de manerio predicto tota vita ipsius Roberti per quoddam scriptum quod idem Robertus hic profert in hec verba Uniuersis ad quos presens scriptum peruenerit Iohannes de Gosehalle miles salutem Nouerit uniuersitas me pro obsequio et consilio Roberti de Stureye michi inpenso et in negotiis meis infra Comitatum Kancie sumptibus meis versus quoscumque exceptis causis seu negotiis ipsum Robertum seu personas ipsum consanguinitate vel affinitate contingentes tangentibus negotiis seu causis maiorem et communitatem de Sandwyco et libertatem quinque portuum Abbatem et conuentum Sancti Augustini Cantuarie Abbatem et conuentum sancte Radegundis Ricardum de Weylaund et Reginaldum Hurel de Cantuaria tangentibus inposterum inpendendo dedisse et concessisse eidem Roberto duas marcas annui redditus de manerio meo de Gosehalle cum pertinentiis Habendum et recipiendum predictum annuum redditum predicto Roberto ad terminum vite sue ad duos anni terminos videlicet medietatem in festo natiuitatis beati Iohannis Baptiste et aliam medietatem in festo Natalis domini in manerio supradicto Ad quam saluiozem faciendam obligo dictum manerium districcioni dicti Roberti ut plene et libere illud distringere possit si dictum redditum aliquo termino detineri contigerit Et quando eidem Roberto dictam feci donacionem iuravit tactis sacrosanctis Ewangelis michi esse fidelis et iuxta vires suas fidele consilium et auxilium in meis negotiis inpendere in futuro et ad expeditionem negotiorum meorum vocatus venire nisi rationabili causa fuerit impeditus Et nomine seisine dicti redditus eidem Roberto unam marcam pro manibus persolui. In cuius rei etc. Et dicit quod ipse de redditu predicto per concessionem predictam fuit seisitus de predicto redditu etc. et dicit quod postmodum predicto manerio in seisina predictorum Alicie et Galfridi existente etc. et predicto redditu eidem Roberto aretro existente etc. Idem Robertus distrinxit in eodem manerio pro arreragiis predicti redditus etc. predicti Alicia et alii districcione illam replegiauerunt ad placitandum in Comitatu etc. et sic eum disseisiuit et hoc petit quod inquiratur per assisam.

The finding of the assize was :—quod predictum manerium de Gosehalle modo positum in visu quod predictus Robertus asserit onerari de predicto redditu fuit in seisina predicti Iohannis de Gosehalle ut Ius ipsius Iohannis et quod idem Iohannes manerio illo in seisina sua existente per longum tempus ante recognicionem predictam factam predicto Magistro Iacobo de predicto delicto dedit et concessit predicto Roberto predictum redditum viginti et sex solidorum et octo denariorum percipiendum annuatim de predicto manerio tota vita ipsius Roberti et obligauit manerium illud districcioni ipsius Roberti quocienscumque redditus ille ei aretro fuerit secundum tenorem scripti predicti. Et dicunt quod postmodum predictum manerium deuenit ad manus predictorum Thome de Wrotham Alicie et Galfridi et



## Note from the Eyre Roll—continued.

quod predictus Robertus fuit seisis de predicto redditu virtute scripti predicti dum manerium predictum fuit in seisis predicti Iohannis et eiam postea tota vita predicti Thome de Wrotham. Et dicunt quod postea iam duobus annis elapsis predicto redditu prefato Roberto de tempore duorum annorum proximo precedentium aretro existente Idem Robertus distrinxit in predicto manerio pro arreragiis predicti redditus quam districtionem predicti Alicia Galfridus et Thomas Tonk replegiauerunt ad placitanda in comitatu. Et dicunt quod postmodum manerium predictum circa festum sancti Michaelis proximo preteritum liberatum fuit predicto Magistro Iacobo tenendum secundum formam statuti quousque predictum debitum ducen-

I.<sup>1</sup>

Robert de Stereye porta assise de novel disseisine vers mestre James de Cobeham et un Alice q<sup>i</sup> fust la femme Thomas de Wrotham <sup>2</sup>et Jon le fitz mesme ceste Alice<sup>2</sup> et se pleint estre disseisi de vii.<sup>3</sup> marcs de rente a prendre del manoir de Gosehale par especialte qe tesmoyna qe Jon de Gosehale avoit charge mesme le manoir <sup>4</sup>a terme de la vye Robert<sup>4</sup> en ij. marcs par an et avoit oblige le manoir a la destresse la rente feust ariere. Robert destreint en le manoir <sup>5</sup>et les autres firent<sup>5</sup> la deliveraunce et issint <sup>6</sup>assigna la cause de disseisine<sup>6</sup> Touz forpris James firent defaute par quei lassise fust agarde <sup>7</sup>par lour defaute.<sup>7</sup> James respond par bailif et dit qe Jon de Gosehale se obligea <sup>8</sup>estre tenuz a lui<sup>8</sup> en ccc. marcs<sup>9</sup> par <sup>10</sup>statut marchaunt<sup>10</sup> a paier a certain jour. A quel jour il ne paia point par qey James siwy par forme de statut qe le manoir avaunt dit lui feust livre a tenir en noun de fraunktenement taunt qe la dette fust levee <sup>8</sup>et ceo par resonable estente<sup>8</sup> et dit qe cele rente ne feust pas estendue qaunt le manoir lui feust livreee et dit qe autre estat navoit en les tenementz par qey il ne pout oyr la reconiceance del assise saunz Jon<sup>11</sup> fitz et heir lavaunt dit Jon de Gosehale et il nient nome etc.<sup>12</sup> mes <sup>13</sup>dit feust<sup>13</sup> qe <sup>14</sup>la obligacioun feust fet a Robert longement avant la reconisaunce del estatut.<sup>14</sup>

SPIGURNEL. est James la en propre persone <sup>15</sup>dit feust qe<sup>15</sup> par bailif—q<sup>i</sup> dit sil ust este en propre persone il pout aver plede al abatement de bref ou a barre lassise. <sup>16</sup>Mes ceo ne poeit il mye par baillif.<sup>16</sup>

*Stonore* nous avoms tenaunt et disseisor et prioms lassise.

*Pass.* nous navoms autre estat fors une tenaunce en noun de frank-

<sup>1</sup> Text of (I) from  $\gamma$  collated with  $\epsilon$ . <sup>2-2</sup> etc.  $\epsilon$ . <sup>3</sup> ij.  $\epsilon$ . <sup>4-4</sup> a meyme cesty Robert a terme de sa vye  $\epsilon$ . <sup>5-5</sup> Alice fist  $\epsilon$ . <sup>6-6</sup> se pleynt il estre disseisi etc.  $\epsilon$ . <sup>7-7</sup> ver els etc.  $\epsilon$ . <sup>8-8</sup>  $\epsilon$  omits. <sup>9</sup>  $\epsilon$  adds al avaunt dit James. <sup>10-10</sup> un estatut  $\epsilon$ . <sup>11</sup> Henry  $\epsilon$ . <sup>12</sup>  $\epsilon$  adds Jugement du bref. <sup>13-13</sup> fet a saver qe *Stonore* dist  $\epsilon$ . <sup>14-14</sup> le maner fust oblige en la rente avant la reconisaunce fete en lestatut etc.  $\epsilon$ . <sup>15-15</sup> ou coment. *Westcote.* Sire  $\epsilon$ . <sup>16-16</sup> from  $\epsilon$ .

Note from the Eyre Roll—*continued*.

tarum et quadraginta librarum inde leuauerit unde dicunt quod predicti Alicia Galfridus et Thomas Tuk pro hoc quod districtionem predictam pro predicto redditu prefato Roberto aretro existente captam ut predictum est replegiauerunt predictum Robertum de redditu predicto iniuste disseisiuit.

The judgment was :—quod predictus Robertus recuperet seisinam suam de predicto redditu per visum recognitorum et arreragia sua et dampna que taxantur per eosdem ad decem marcas et predicti Alicia Galfridus et Thomas Tuk in misericordia et similiter predictus Robertus in misericordia pro falso clamore versus predictos Iacobum et Henricum etc.<sup>1</sup>

## I.

Robert of Sturry brought an assize of novel disseisin against Master James of Cobham and one Alice that was wife of Thomas of Wrotham and John the son of this same Alice, and complained of being disseised of seven marks of rent issuing from the manor of Gosshall in virtue of a specialty which testified that John of Gosshall had charged the same manor, for the term of Robert's life, with an annual rent of two marks, and had made the manor subject to distress. The rent was in arrear. Robert distrained upon the manor, and the others replevied; and thereby disseised him. All made default except James, and the assize was awarded [against them] by their default. James answers by his bailiff and says that John of Gosshall bound himself to him under the Statute Merchant in the sum of three hundred marks to be paid upon a certain day. He did not pay them upon that day, and James therefore sued in accordance with the Statute that the aforesaid manor should be delivered to him to hold as of freehold until the debt was paid according to a reasonable valuation; and he says that this rent was not taken into account when the manor was delivered to him, and he says that he has no other estate in the tenements; and therefore he cannot hear the recognition of the assize without John, the son and heir of the aforesaid John of Gosshall, who is not named etc.; but it was said that the rent-charge was given to Robert long before the recognition under the Statute.

SPIGURNEL J. Is James here in person?—it was said that he appeared by his bailiff—and SPIGURNEL J. said that if he had been present in person he could have pleaded in abatement of the writ or in bar of the assize, but he could not do that by his bailiff.

*Stonore.* We have a tenant and a disseisor, and we pray the assize.

*Passeley.* We have no estate save a tenancy as of freehold *as above*;

<sup>1</sup> *m.* 11.

tenement ut supra par quei nentendoms mie qe vous voilez <sup>1</sup>al assise aler saunz ceo qe le heir ne soit nome.<sup>1</sup>

*Stonore.* si ceus qi fount defaute fucent si vous troverez par lour responce qe lassise girreit vers eux mes per lour defaute il covent enquerir ceo par assise <sup>2</sup>par quei nous prioms lassise.<sup>2</sup>

*GOLD.*<sup>3</sup> si nous trovoms ceo par assise qe est alegge par bailif au tiele avantage avera la partie par vertu dassise com si la partie feust ici en propre persone <sup>4</sup>et leust plede.<sup>4</sup>

*Stonore* conuceoit bien qe Adam navoit autre estat qe ne feust dit.

*SPR.* vostre bref eust este le meilour si le heir Jon eust este nome qar vous biez recoverir ceste rente a terme de vostre vye vers James qi nad qe une tenaunce en noun de franktenement et pout estre qe vivaunt vous la dette serra leve et son terme<sup>5</sup> passe de cele tenaunce par qey il ne peut a cest recoverir estre partie saunz le heir le dit Jon <sup>6</sup>qe nest nient nomez<sup>6</sup> etc. si agard <sup>7</sup>la court qe vous ne pregnez<sup>7</sup> rien etc. par vostre bref <sup>8</sup>einz soiez en la merci etc. et purchacez si vous volez bref et joinez le heir Jon etc.<sup>8</sup>

## II.<sup>9</sup>

Novel disseisine de rente charge ou il navoit mie tenementz dil dreit nome en le bref mes tenaunce par statut marchaund et pur ceo pria conge de quere meliour bref et habuit.

Robertus Sturrey<sup>10</sup> porta un assise de novel disseisine vers Mestre Jamus de Cobham et Alice qe fut la femme Geffrei de Gossehalle<sup>11</sup> et autres et mist en sa plainte<sup>12</sup> deus mars de annuele rente ove les appurtenans etc. Touz fors James vindront<sup>13</sup> par bailliff et diseient qil navoient fest nul tort etc. Et James vous respount<sup>14</sup> com tenaunt et dit qe a tort porte il cest assise qe un Johan de Gossehalle se obliga a James de Cobham en ecc. li. par statut marchaunt a paier a certain jour issi qe apres le jour passe il sui bref et rescoveri les tenemenz par force de statut et issi entra il saunz tort fere.

*Stonore.* nous conissons bien qe Johan fut seisi en ceux tenementz mes long temps avaunt la conisance fete il nous graunta par ceo fet deus Marcz par an a tote nostre vie et obliga les tenemenz a la distresce en qi meins etc. et issi fumus seisi tauntqe vous <sup>1</sup>a tort<sup>1</sup> etc.

<sup>1-1</sup> a ceste aler €. <sup>2-2</sup> from €. <sup>3</sup> HERVY €. <sup>4-4</sup> € omits. <sup>5</sup> from €; temps γ. <sup>6-6</sup> from €. <sup>7-7</sup> from €. <sup>8-8</sup> set etc. e pus apres Robert

porta un altre assise e noma leyr Johan de Goshale e recovery par assise. €.

<sup>9</sup> Text of (II) from α collated with β and λ. <sup>10</sup> from λ; Sturmei α, β.

<sup>11</sup> Goschale λ. <sup>12</sup> veu β. <sup>13</sup> vinderent β. <sup>14</sup> respondist β.



and therefore we submit that you cannot proceed to the assize without the heir being named.

*Stonore.* If those who are in default were present you would find from their replies that the assize would lie against them ; but, since they are in default, we must needs enquire into that by assize ; and therefore we pray the assize.

GOLDINGTON J. If the assize find that what the bailiff says is true the defendants will have the same advantage by the finding of the assize as they would have had if they had been here in person and had pleaded to it.

*Stonore* admitted that James had no other estate than was alleged by him.

SPIGURNEL J. Your writ would have been better if John's heir had been named in it, for you are trying to recover this rent for the term of your life against James, who has only a tenancy as of freehold ; and it may be that the debt will be paid and James's term at an end during your lifetime. Consequently James cannot be a party to this recovery without the heir of the said John, who is not named etc. Therefore the Court gives judgment that you take naught by your writ but be in mercy etc. ; and take out another writ, if you like, and join John's heir etc.

## II.

Novel disseisin of a rent-charge where the tenant had not that estate in the tenements which the writ alleged that he had, but held them under Statute Merchant. And therefore the demandant prayed leave to sue out a better writ, and had it.

Robert Sturry brought an assize of novel disseisin against Master James of Cobham and Alice that was wife of Geoffrey of Gosshall and others, and laid in his plaint two marks of annual rent together with the appurtenances etc. All, except James, came by bailiff and said that they had done no wrong etc. And James answers you as tenant and says that the demandant has brought this assize wrongly ; for one John of Gosshall bound himself under Statute Merchant to pay three hundred pounds to James of Cobham upon a certain day. And when that day had passed James sued out a writ and recovered the tenements by virtue of the Statute, and so he entered without doing any wrong.

*Stonore.* We admit that John was seised of those tenements ; but, long before the recognition, he granted us by this deed a rent-charge of two marks yearly for the whole term of our life, and he bound the tenements to distress in whosoever hands etc. and so we were seised until you wrongfully etc.

SPIG. vous pledez auxi com le tenement fut en demaunde la ou vous alleggez vostre entre en excusaunt vostre tort.

Toud. la terre feut estendue saunz aver regard a ceste charge et issi la<sup>2</sup> fut il a nous liverree saunz charge prest etc.

Stonore. ceo vostre folie demene.

Pass. si vous volez cest assise prendre avisez vous quel tenaunt vous avez qe nous navoms rien en les tenemenz si noun meinovere<sup>3</sup> si la qe la dette soit leve<sup>4</sup> et il est a recoverir rente a terme de sa vie le quel recoverir<sup>5</sup> covendra estre<sup>6</sup> verrai tenaunt.

SPIGUR. nest paas le tenaunt de franc tenement nomee.

Pass. sire noun 'il nous fet soul nomer tenant.<sup>8</sup>

Stonore. nous portoms nostre assise vers James et vers autres qe fount defaute et lassise agarde par lour defaute et sil fussent en propre persone il eussont par cas responder com tenant.

SPIG. mes si nous trovoms par assise qil neit autre tenant en le bref qe Mestre James le bref serra abbatu et pur ceo si issi seit ieo vous loo<sup>9</sup> qe vous priez conge etc. qe si<sup>10</sup> issi seit qe<sup>11</sup> le tenant de dreit ne seit nomee en le bref la ou lassise est de rente chargee tut soit le tenaunt a terme de vie ou par fourme de statut nomee le bref irra a terre pur ceo qil ne peut estre partie al jugement qe se liera plus haust qe soun estat.

Et il pria conge<sup>12</sup> de querer autre bref<sup>13</sup> et habuit.

### III.<sup>14</sup>

Robert Stores<sup>15</sup> porta une assise de novel disseisine vers James de Cobham et se pleint estre disseisi de<sup>16</sup> son franc tenement<sup>16</sup> en Eschez<sup>17</sup> pus le term etc. et mist en sa pleint xvj.s. viij.d. darreres de rente par an.<sup>17</sup>

James fut<sup>18</sup> par baillif<sup>19</sup> et respond par<sup>19</sup> Toudebi qe les tenemenz qe furent mys en vewe dount<sup>20</sup> ceste rente serreit issant se<sup>20</sup> furent en ascun temps en la seisine un Johan de Goshale qi ceux tenemenz conust estre tenuz a James en iiiij. li.<sup>21</sup> a payer a un certeyn iour et se obligea en lestatut a quel jour il ne paia pas pur quei James suyt tant vers J. de G. qe ceux tenemenz ly furent deliueres par lestatut<sup>22</sup> tanqe la dette seit leue et issit est James tenant<sup>17</sup> de ceux tenemenz<sup>17</sup> par execution de jugement fet en la court le Roi.

<sup>1-1</sup> from β; α omits.    <sup>2</sup> aa and β omit.    <sup>3</sup> un meme hure β.    <sup>4</sup> livre β.  
<sup>5-6</sup> serreit β.    <sup>7-8</sup> λ omits.    <sup>9</sup> li loue β.    <sup>10-11</sup> from β; α omits.    <sup>12-13</sup> from  
λ.    <sup>14</sup> Text of (III) from δ collated with ζ.    <sup>15</sup> Storrai ζ.    <sup>16-16</sup> xxvj.s.  
viiij.d. arre de rent par an ζ.    <sup>17-17</sup> ζ omits.    <sup>18</sup> respond ζ.    <sup>19-19</sup> ζ omits.  
<sup>20-20</sup> etc. ζ.    <sup>21</sup> ccc. marcs ζ.    <sup>22</sup> estent ζ.

SPIGURNEL J. You<sup>1</sup> are granting the circumstances in which the tenement is demanded when you admit your entry and deny any wrong done by you.

*Toudeby.* The land was valued without having regard to this charge, and so it was delivered to us as without charge. Ready etc.

*Stonore.* You have only yourselves to blame for that.

*Passeley.* If you want to have this assize, consider what tenant you can lay, for we have naught in the tenements except a bailiff's interest<sup>2</sup> until the debt be paid; and Robert wants to recover a life-term, for which recovery you must have a real tenant.

SPIGURNEL J. Is not the tenant of the freehold named?

*Passeley.* No, Sir. He only names us as tenant.

*Stonore.* We bring our assize against James and the others who make default. The assize is awarded by reason of their default, but if they were here in person it may be that they could answer as tenants.

SPIGURNEL J. But if we find by assize that there is no other tenant in the writ than Master James the writ will be abated; and because it may so turn out I will allow you to pray leave etc. For if it so be that the tenant by right is not named in the writ, where the assize is in respect of a rent-charge, even though the tenant for a life-term or under the Statute be named, the writ will be bad, for such an one cannot be party to a judgment which affects an estate higher than the one he has.

And the demandant prayed leave to sue out another writ, and he had it.

### III.

Robert Sturry brought an assize of novel disseisin against James of Cobham, and complained that he had been disseised of his freehold in Ash within the limitation etc. and in his plaint he laid sixteen shillings and eightpence of arrears of a yearly rent.

James was present by his bailiff and answers by *Toudeby*, who says that the tenements that were put in view, from which this rent issues, were at one time in the seisin of John of Gosshall, who acknowledged them to be held by James as security for the payment of five pounds to be paid upon a certain day, and he bound himself under the Statute. Upon the day assigned he did not pay; whereupon James brought action against J. of G. for delivery to him of those tenements under the Statute till the debt was paid. James is, consequently, now tenant of these tenements in virtue of a judgment delivered in the King's Court.

<sup>1</sup> *Sc.* James of Cobham, the respondent.

<sup>2</sup> No authority for this

use of *meinovere* has been found outside the reports of this case.



*Stonore.* bien est verite qe ceux tenemenz furrent en ascun temps en la seisine Johan le quel J. granta a ceste R. les xvj.<sup>1s.</sup> viij.<sup>d.</sup> <sup>2</sup>de an en an a prendre des auantddits tenemenz en E. et les obligea a le destreinte R. en qi mains etc. Et ceo fut long temps auant ceo qe ceo conisance fut fait a James et issint fut R. long temps seisi de ceste Rente tanqe ore a iij. anz qe la rente fut arrere et vint et voleit destreindre et James fit la deliuerance et issint sumes nous disseisi et prioms lassise.

*Pass.* <sup>3</sup>veez si James eit<sup>3</sup> tel estat qil<sup>4</sup> pout souffre ceste charge et demandoms jugement sil deiuent ceste assise vers James user desicom il nad nome en le bref J. de G.

† *Stonore.* res transit cum onere et dit qe les terres passerent en la mayn James chargez.

Judicium.

*Pass.* pur ceo qe cesti qe porte ceste assise bie recouerir franc tene-ment <sup>5</sup>a terme de vie et possibel est que celi que demande vie plus longement que celi que tent les tenementz<sup>5</sup> par estent et vous nauez ioint en le bref a qi la reuercion appent si agarde ceste court qe vous ne preignez rien par vostre bref.

#### IV.<sup>6</sup>

Robert de Stureye porta lassise de novel disseisine vers James de Cobham et une Alice de T. et Geffray son fiz et se pleint estre disseisi de une rente charge et assigna cause de disseisine par repleuine.

*Frisq.* James est cy par bailif et vous dit qil tint en mein lez tenemenz par statut qe Johan de Wrotham ly fut oblige en certeine dette etc. et lez tenemenz ly liueres furent par resonable estat et la rente ne mie estendu et nad forqe meineuere pur quei le bref uers ly ne put estre meintenu.

SPIGURNEL. bailif ne put conustre la tenance de son seignour mes son dit sera trie par assise et quoi respondent Alice et Geffray.

Il ne ont en ceus tenemenz forqe terme de vie de lees J. de Wrotham et la revercion a ly nient nome en le bref jugement de bref.

SPIGURNEL. le qel est Geffray de age ou denz age.

*Toudebi.* denz age.

<sup>1</sup> xxvj. ζ.      <sup>2</sup> ζ adds de rente.      <sup>3-3</sup> Sire veez ci James qe vous dit qe  
ad ζ.      <sup>4</sup> ζ adds ne.      <sup>5-5</sup> from ζ.      <sup>6</sup> Text of (IV) from 7.

Novel  
disseisin  
port uers  
tenant par  
statut  
merchant.

*Stonore.* It is true that these tenements were formerly in the seisin of John, which John granted to this R. the right to receive the sixteen shillings and eightpence chargeable annually upon these tenements in Ash, and he made the tenements liable to distress by R. no matter in whose hands etc. And this was a long time before that acknowledgment was made to James ; and R. was consequently seised for a long time of this rent. The rent was in arrear for these three years past, and Robert came and wished to distrain and James replevied, and so we are disseised, and we pray the assize.

*Passeley.* Consider if James had such an estate as would make him liable to this charge. And we ask judgment whether they ought to have this assize to use against James, since he is not named in John of Gosshall's deed.

*Stonore.* *Res transit cum onere* ; and he said that the lands passed into James's hand burdened with the charge.

*Passeley.*<sup>1</sup> Since he that brings this assize is trying to recover a freehold for the term of his life, and since it is possible that he may live longer than the tenant by extent of the tenements, and since you have not joined the reversioner in your writ, this Court gives judgment that you take naught by your writ.

## IV.

Robert of Sturry brought the assize of novel disseisin against James of Cobham and one Alice of T. and Geoffrey her son ; and he complained that he had been disseised of a rent-charge, and laid that he was disseised by a replevin.

Novel  
disseisin  
brought  
against the  
tenant by  
Statute  
Merchant.

*Friskenev.* James is here by his bailiff and tells you that he is in possession of the tenements under the Statute ; that John of Wrotham was bound to him in a certain debt etc. and the tenements were delivered to him upon a reasonable valuation, and that the rent-charge was not included in that valuation ; and he has nothing but a bailiff's possession ; wherefore the writ cannot be maintained against him.

SPIGURNEL J. A bailiff cannot admit the tenancy of his master, but the truth of what he says will be enquired of by assize. And what do Alice and Geoffrey answer ?

[*Friskenev*]. They have a life-term only in these tenements by the lease of John of Wrotham, and the reversioner is not named in the writ. Judgment of the writ.

SPIGURNEL J. Is Geoffrey of age or within age ?

*Toudeby.* Within age.

<sup>1</sup> This speech must be wrongly attributed, as it is clearly the speech of a judge.

SPIGURNEL. donqe ne put il auer conusance de tenance pur quei il couent trier par assise mes vers James qi nad qe meineuere ne put il iammes franc tenement recouerer et G. et A. sunt tenanz a terme de lour .ij. vies a qi est la reuercion a T. le fiz J. de W. sil fut nome le bref sereit le meilour.

*Toudebi.* desicom James nad sinon a terme de anz par statut en noun de franctenement et Alice et Geffrey ne ont qe terme de vie et vous voet recouerer une rente charge qe ne put estre suffert si le heir en qi le droit repose ne fut nome qe nul jugement put en ceo cas prendre effeit si le heir qi droit sereit charge par la nature de son recouerer qe sereit a terme de sa vie jugement de pus qil nest pas nome etc.

SPIGURNEL. pur ceo qe vous portez ceti bref de nouel disseisine et ne auit pas tenant uers qi jugement se put perforner [*sic*] pernez rien par vostre bref.

Et nota qe *Fris.* dit qe la cause fut cete qe si terre vst este en demande donc vst le bref pas abatu qar a moinz il put auer reconu ceo qe le tenant de franctenement auoit mes ou il demande rente charge il demande une charge qi se lie sur altri droit par especialte la quele especialte il ne put estre partie a trier et pur ceo couent qe le heir qi pora le fet trier et uers qi le jugement purra estre final seit nome et uers qi le jugement sereit ennuysaunt quant il vendreit a sa reuercion sil ne fut nome etc.

STUREY v. COBEHAM.<sup>1</sup>I.<sup>2</sup>

<sup>3</sup>Peus apres Robert de Stureie<sup>3</sup> porta un autre bref<sup>4</sup> de novel disseisine<sup>5</sup> et noma en son bref<sup>5</sup> mestre James de Cobeham Alice qi fust <sup>6</sup>la femme<sup>7</sup> Thomas de Wrotham<sup>8</sup> et Jon le fitz ceste Alice et furent nomez en le primer bref<sup>9</sup> et Henry de Goseale qi ne fust<sup>10</sup> nient nome en le primer bref<sup>11</sup> touz forpris James firent defaute par qey etc. mestre James respond <sup>12</sup>com avant<sup>12</sup> par bailif <sup>13</sup>et dit qil avoit siwi par statut etc.<sup>13</sup> ut supra in alio placito et dit qil avoit nul tort fet etc. Lassise vynt et dit qe le manoir de Gosehale fust en la seisine Jon de Gosehale qi graunta ij. marcs a Robert <sup>14</sup>de Stureye<sup>14</sup> a termè de sa vie a prendre del manoir et obligea le manoir a la destresse et disent qe Robert fust seisi

<sup>1</sup> Reported by β, γ, γγ, δ, ε, ζ, θ, κ, κκ.  
with δ and ζ.

<sup>6-7</sup> ζ omits.

<sup>10</sup> furent ζ.  
les statuts ζ.

<sup>7-8</sup> J. de Brogham ζ.

<sup>12-12</sup> δ, ζ omit.

<sup>14-14</sup> Storri δ.

<sup>3-5</sup> Robert Storri pus ζ.

<sup>2</sup> Text of (I) from γ collated

<sup>4</sup> assise ζ.

<sup>5-5</sup> vers ζ.

<sup>8-9</sup> Johan son fiz ζ.

<sup>9-11</sup> δ omits.

<sup>13-13</sup> qe il avoit ces tenementz par estent solom



SPIGURNEL J. Then he cannot make acknowledgment of tenancy, and the question must therefore be tried by assize. But against James, who has naught but a bailiff's estate, he can never recover a freehold ; and Geoffrey and Alice are tenants for the term of their two lives. It would have been better if T. the son of J. of W. had been named in the writ, for the reversion belongs to him.

*Toudeby.* James has nothing more than a term of years<sup>1</sup> under the Statute as of freehold, and Alice and Geoffrey have only a life-term, and you are seeking to recover a rent-charge ; but that cannot be allowed unless the heir in whom the right reposes is named ; for in the present circumstances no judgment could take effect if the heir, whose right would be charged by the nature of the recovery, which would be for the life of the demandant, [be not named]. Judgment, since he is not named etc.

SPIGURNEL J. Because you bring this writ of novel disseisin and have no tenant against whom judgment could be executed, take naught by your writ.

And note that *Friskenev* said that the reason of this was that while, if the land had been in demand, the writ would not have abated, for the assize could at any rate have made recognition of what the tenant of the freehold had, yet, the demand being for a rent-charge the demandant was seeking by specialty something which affected the right of another who could not be party to the trial of that specialty ; and therefore the heir who could be party to the trial of the deed and against whom any judgment would be final, and against whom, when he entered upon his reversion, a judgment to which he was not party would be prejudicial, ought to be named.

## STURRY v. COBHAM.

### I.

Afterwards Robert of Sturry brought another writ of novel disseisin ; and in his writ he named James of Cobham, Alice that was wife of Thomas of Wrotham and John the son of this Alice—who were named in the previous writ—and Henry of Goshall, who was not named in the previous writ. All of these, except James, made default, wherefore etc. Master James answered as before by his bailiff and said that he had put in an answer under the statute *as above* in another plea, and he said that he had done no wrong etc. The Assize came and said that the manor of Gosshall was in the seisin of John of Gosshall, who granted two marks to Robert of Sturry for the term of his life to be receivable from the manor ; and he bound the manor to distress ; and it said that

<sup>1</sup> James had not a term of years.

de la rente par la mayn Jon etc. et disent qe Jon peus se obligea a mestre James en statut etc. ut <sup>1</sup>supra<sup>1</sup> et peus lessa le manoir a Thomas de Wrotham et a Alice sa femme et a Jon lour fitz a terme de lour vyas et pur ceo qe la rente fust ariere Robert prist une destresse en le manoir et Alice fist la delivraunce et ensuit fust Robert disseisi peus mestre James siwist par statut <sup>2</sup>qe le manoir<sup>2</sup> ly feust livere taunt qe la dette fust leve etc. et autre tort ne fist etc.

SPIGURNEL com bien est<sup>3</sup> passe qe R. destreina et Alice fist la delivraunce.

*Pas.* sire la ou un tenement est charge dune secke<sup>4</sup> rente le cesser est cause de disseisine <sup>5</sup>par qey il covent enquerir com bien est passe peus qil cessa qar<sup>5</sup> la rente fust ariere einz<sup>6</sup> qe R. destreina.

Et SPIGURNEL chargea lassise de ceo qe<sup>7</sup> dit qe le<sup>8</sup> fust ariere ij. aunz avant la destresse et ij. aunz apres <sup>9</sup>et ses arrieres de viij.<sup>10</sup> marcs.

SPIGURNEL si agard la court qe R. recover sa rente de ij. marcs <sup>11</sup>et ses arrieres de viij. marcs<sup>12</sup> et ses damages de ij. marcs<sup>13</sup> et Alice<sup>14</sup> etc. en la merci et pur ceo qe <sup>15</sup>James nad fet nul tort <sup>16</sup>ne Henry etc.<sup>17</sup> Robert<sup>18</sup> vers eux en la merci.

<sup>19</sup>*Nota* qe justices ne voleient mie enquerir des chateus emportez en une disseisine mes soulement de chateus atachez a la terre qar ils disent qil pout avoir recoverir dautres chateus par bref de trespas et ceo semble countre statut qe parle de disseisine fete ove roberie etc.<sup>19</sup>

## II.<sup>20</sup>

Robert de<sup>21</sup> Sturry porta son breve de novel disseisine vers <sup>22</sup>A. qi fut la femme G. de W.<sup>23</sup> et G. fitz T.<sup>24</sup> et mestre James de Copham <sup>25</sup>et altres<sup>26</sup> et se pleynt estre disseisi <sup>27</sup>de xxvj. s.<sup>28</sup> de Rente la qele il dut prendre du franc tenement qe fut a <sup>29</sup>T. de Cosehale<sup>29</sup> en la maner de Esse<sup>30</sup> et counta la maner de la disseisine<sup>31</sup> et <sup>32</sup>dit qe <sup>33</sup>T. de C.<sup>33</sup> granta a mesme cesti Robert de Sturrey <sup>34</sup>ij. marches<sup>34</sup> de Rente a prendre de <sup>35</sup>son franc tenement en Esse<sup>35</sup> et obliga mesme le tenement a la destresse R. en

Novel  
disseisine.

<sup>1-1</sup> in primo placito δ, ζ. <sup>2-2</sup> par quay les terres ζ. <sup>3</sup> ζ adds il. <sup>4</sup> δ omits.  
<sup>5-5</sup> il ne covent nen enquerir com bien qe ζ. <sup>6</sup> ζ adds ceo. <sup>7</sup> ζ adds fut.  
<sup>8</sup> la rente ζ. <sup>9-10</sup> a ses damages de deux ζ. <sup>9-12</sup> δ omits. <sup>11-13</sup> ζ omits.  
<sup>14</sup> δ, ζ add qi fut la femme T. de W. <sup>15-17</sup> les autres ne firent nul tort ζ.  
<sup>16-18</sup> le fitz Jon δ. <sup>19-19</sup> δ omits. See a similar note from κκ in connection with  
another case on p. 63. <sup>20</sup> Text of (II) from γγ collated with κ and κκ. <sup>21</sup> κκ  
omits. <sup>22-26</sup> Mestre James de Cobham Alice et Jone κκ. <sup>23</sup> Wrotham κ.  
<sup>24</sup> etc. κ. <sup>25-26</sup> κ omits. <sup>27-31</sup> de soun franc tenement et mist en sa  
plainte xxvj.s. viijd. de rente et en la veue des Jurours certains tenemenz ou la  
rente dust estre resceu et qe furent a la destresse obliges pur la rente auant dite κ.  
<sup>28</sup> xxvijs. viijd. κ. <sup>29-30</sup> Thomas de Goshale κ. <sup>30</sup> κ adds et la manere  
de B. <sup>31</sup> Stanth. Sire R. vous κκ. <sup>32-33</sup> J. de G. fust seisi des tenemenz  
mis en veue et κκ. <sup>34-34</sup> xxvijs. viijd. κ. <sup>35-35</sup> tenemenz avantdits κκ.

Robert was seised of the rent by the hand of John etc., and it said that John afterwards bound himself under the statute to Master James etc. *as above*, and that he afterwards leased the manor to Thomas of Wrotham and Alice his wife and John their son for the term of their lives ; and that, because the rent was in arrear, Robert levied a distress upon the manor, and that Alice replevied it, and that Robert was consequently disseised. Afterwards Master James sued under the statute that the manor should be delivered to him until the debt was paid etc., and [said that] he had done no wrong etc.

SPIGURNEL J. What time elapsed between Robert's distraint and Alice's replevin ?

*Passeley.* Sir, when a tenement is charged with a rent seek the failure to pay the rent is an act of disseisin, and therefore the enquiry ought to be as to what time elapsed after the payment ceased before Robert distrained, for the rent was in arrear.

And SPIGURNEL J., charged the assize as to that ; and the assize said that the rent was in arrear for two years before the distress and for two years afterwards ; and that the arrears amounted to eight marks.

SPIGURNEL J. The Court therefore gives judgment that Robert recover his rent of two marks and his arrears of eight marks, together with damages in the sum of two marks ; and that Alice etc. be in mercy ; and that, because neither James nor Henry etc. has done any wrong, Robert is to be in mercy [for his false claim] against them.

Note that the Justices would not allow an enquiry as to the chattels carried away in a disseisin, but only as to the chattels attached to the soil, for they said that the demandant might have recovery of the other chattels by a writ of trespass ; which seems contrary to the Statute which speaks of disseisin done with robbery etc.<sup>1</sup>

## II.

Robert of Sturry brought his writ of novel disseisin against A. that was wife of G. of W. and G. the son of T. and Master James of Cobham and others, and complained of being disseised of twenty-six shillings of rent which he ought to have received from the freehold that belonged to T. of Gosshall in the manor of Ash, and he counted of the manner of the disseisin and said that T. of G. granted to this same Robert of Sturry two marks of rent receivable from his freehold in Ash, and he

<sup>1</sup> See a similar note from KK in connection with another case on p. 63. The Statute referred to is the Statute of Westminster I. cap. xxxvii. See also *Introduction*, pp. xix-xx.



qi meyns qe lez tenementz deuenissent a quel iour<sup>1</sup> qe la Rente fut arere  
<sup>2</sup>E pur ceo qe la Rente fut arere etc.<sup>2</sup> R. vynt en mesmes lez tenementz  
<sup>3</sup>et destreinit<sup>3</sup> et James et lez autres nomez en la bref firent la pleuyne  
et issi est disseisi.<sup>4</sup>

*Pass.* pur James dit qe <sup>5</sup>T. de C.<sup>6</sup> fit une conissaunce <sup>7</sup>a James<sup>8</sup> en  
CCC. li. <sup>9</sup> per statut Marchand et les tenementz furent liueres a lauandit  
James solon la forme del estatut.

*Stonore* T. granta cel annuyte a R. Sturrey auant cel conissaunce  
fait aunz et iours prest etc. pur lassise.<sup>10</sup>

SPIGURNEL est James en propre persone.

*Pass.* James est cy par baillif.

SPIGURNEL donques ne put il conustre <sup>11</sup>ad il autre tenant en le bref.<sup>11</sup>

*Toudebi* oyl une Alice et Gyffrey son fitz qi sont tenaunz de ce  
tenement.

HERUI<sup>12</sup> coment sount tenantz de ceuls tenementz.

*Toudebi* dit qe a terme de vie du lees T. et la Reuercion a H. fitz T.

*Frisk.* est le heir nome en le bref <sup>13</sup>oue les autres<sup>13</sup>.

Nanyl.

<sup>1</sup> hure κ. <sup>2-2</sup> κ omits. <sup>3-3</sup> a destreindre κ. <sup>4</sup> κκ adds et prie  
lassise. Touz nomes en le bref excepte Mestre James firent defaute pur quoi  
lassise fust agarde deuers eux en lour defaute. <sup>5-6</sup> Thomas de Goshale κ.  
<sup>7-8</sup> κ omits. <sup>8-9</sup> de cc. li. de argent κ. <sup>10</sup> From this point to the end κκ  
reads :

*Pass.* pur Mestre James Sire vous auet cy Mestre J. par baillif qi vous dit  
qe soun mestre nad rien en les tenemenz mis en veue qe de ceste rente deussent estre  
charge si noun un meynhure en noun de franc tenement tanqe une dette de iij.C.li.  
seioint leues et vous dit qe un J. de G. lui fust tenu par statut en les deners auantdits  
a paier a certain iour a quel il ne paia point pur quoi les tenemenz auantdits lui  
furent liueres selom forme de statut etc. pur quoi il nentent nyent qe vous voillez  
a nul assise aler de ceste rente si H. fiz et heir lauandit J. de G. ne fust en bref nome.

*Stanh.* Mestre J. respond par baillif pur quoi ne gist nient en sa bouche a con-  
trepleder lassise ne rien faire forsque excuser le tort son mestre pur quoi nous prioms  
lassise.

*Pass.* si nos mestres vssent par conisance dassise come qe le baillif ad dit qe  
nest pas dedit de partie ieo croi qil abatereient le bref et de pus qil unt par conisaunce  
de partie ceo qe cheit en abatement de bref si la chose fut troue par verdit dassise  
les Justices devereient prendre cele reconisance pur response et sur ceo doner lour  
jugement com auant.

SPIGURNEL a *Stanh.* Mestre J. est par baillif mes autre serreit il sil fust en  
propre persone mes nekement R. est a recouerir un franc tenement a terme  
de sa vie et Mestre James nad estat en les tenemenz si noun un franc tenement  
suspectue tauntqe la dette soit leue et si lassise passast pur Robert deuers Mestre  
James le jugement se dust faire vers Mestre James en la forme auandit sil seoffreit  
pur cas plus haut qe lestat J. ne soit qe pur cas R. puroit plus longement viure qe  
lestat Mestre J. ne dure pur quoi il estut qe celui soit nome en bref vers qi jugement  
se purroit faire a tote la vie R. saver H. le heir Johan de C.

*Stanh.* Sire il sount autres nomes en le bref pur qi defaut lassise est agarde  
deuers eux quy pur cas pount estre partie a tel jugement de quoy nul home ne pust  
estre acerte et prioms lassise a derein anques parlissent R. fust agarde qil ne preit  
rien par soun bref etc. et Mestre James et les autres a dieu etc.

<sup>11-11</sup> κ adds quel estate il ad. <sup>12</sup> For HERUI κ reads Les Justices demandent  
*Toudeby.* <sup>13-13</sup> et les autres disayent qe κ.

bound the same tenement to distress by R. if the rent should be in arrear, in whosoever hands it might be. And because the rent was in arrear etc. R. entered upon the same tenements and distrained ; and James and the others named in the writ replevied ; and so he is disseised.

*Passeley*, on behalf of James, said that T. of G. made an acknowledgment to James under Statute Merchant that he was indebted to him in the sum of three hundred pounds ; and the tenements were delivered to the aforesaid James according to the provisions of the statute.

*Stonore*. T. granted this annuity to R. Sturry years and days before this acknowledgment was made. Ready etc. by assize.

SPIGURNEL J. Is James here in person ?

*Passeley*. James is here by bailiff.

SPIGURNEL J. Then he cannot make admissions. Is there any other tenant named in the writ ?

*Toudeby*. Yes ; one Alice, and Geoffrey her son, who are tenants of this tenement.

STAUNTON J. How are they tenants of these tenements ?

*Toudeby* said that they were tenants for the term of their lives by the lease of T., and that the reversion was in H. the son of T.

*Friskenev*. Is the heir named in the writ with the others ?

*Toudeby*]. No.

donques vaut le bref le meyns qar sanz le heir ne put il auer lassise.

SPIGURNEL. Est Geffrey dage.

Toudebi. G. est de denz age et il ne puet conustre.

Judicium.

SPYGURNEL donques nauetz mye tenanz en vostre bref vers qi vous pussetz auer recouerer qar <sup>1</sup>mesmes ceo iugement qe<sup>1</sup> se freit pour<sup>2</sup> Robert il neo put nyent performer le vers James qar il nad forsque meynoure ne Alice ne G. ne unt forsque estat a terme de vie et vous ne poietz ceo dedire per quei agarde ceste court qe Robert ne prenge rien par son bref etc.<sup>3</sup>

E fut la cause ceste pur ceo qe le iugement serreit final pur R. et ceo ne poet estre pur ceo qe les autres ne unt nul estat forsque <sup>4</sup>franctement et le jugement qe serreit final pur Robert apres le deces le tenantz<sup>4</sup> a terme de vie serreyt vayn sanz ceo qe le heir serreit nome en qi persone le fee et le droit repose. E dautre part fait a sauver qe si James de Copham ust este en propre persone il pout auer abatu le bref sil ne ust autre tenant<sup>5</sup> qe T.<sup>5</sup> pur ceo qe son estat ne fut unqes autre qe a terme des aunz Et nota auxint qe enfant de denz age ne poet conustre qel estat il ad en les tenementz Et idem<sup>6</sup> T. aut eius heres non fuit nominatus etc. ideo etc.

ANON. v. ANON.<sup>7</sup>

I.<sup>8</sup>

Une femme porta une assise de nouel disseisine vers plusours <sup>9</sup>trestouz nomez en le bref firent defaute pur quei lassise fut agarde.

Lassise vint et dit qe ele fut disseisi a ses damages de x.li. par ceux nomez en bref.<sup>9</sup>

Stonore. nous prioms qe lassise <sup>10</sup>eit auisement pour les damages taxez de ceo qe nous dirroms qil furent bele mesons et il abatirunt tut qe la fut issint qele nauera ore ou se meme couerer et le meryn qil trouerent en les mesouns a la mountaunce de xx.li. presterent et enporterent et prioms qe lassise se puyse auiser.<sup>10</sup>

SPIGURNEL.<sup>11</sup> vos damages <sup>12</sup>si com lassise les ad taxe et de vos

<sup>1-1</sup> mesque jugement κ. <sup>2</sup> from κ and κκ; γγ has vers. <sup>3</sup> For etc. κ has et alii sine die. <sup>4-4</sup> κ omits. <sup>5-5</sup> de A. et G. κ. <sup>6</sup> ideo κ. <sup>7</sup> Reported by γγ, δ, ζ. <sup>8</sup> Text of (I) from δ collated with ζ. <sup>9-9</sup> Lassise agarde vers

eus tous par lor defaute lassise prise qe pase pur le pleintif a ses damages de x. li. ζ. <sup>10-10</sup> Eiont regard [seit avise *having been originally written, and then marked for erasure*] pur nos damages taxe qar il abeterent nos mesons e emporterent pris de x. li. et nos blees hors de nostre graunge pristerent pris de x. li. ζ. <sup>11</sup> ζ adds prenez.

<sup>12-1</sup> on p. 74, Solum ceo qe lassise vous ad taxe et de la chose dont vous estez pleint eez vostre bref de trespas qar lassise ne deit taxer sinon les issuz [after fors la value *marked for erasure*] de la terre qe fut merveil pur ceo qe lestatut Westminster primer vout le contrarie capitulo xv. e agard seisin a la feme et ces damages com lassise lavoit taxe etc. ζ.



[*Friskenev*]. Then the writ is worthless, for he cannot have the assize without the heir.

SPIGURNEL J. Is Geoffrey of age?

*Toudeby*. G. is within age and he cannot make admissions.

SPIGURNEL J. Then you have no tenants in your writ against whom you can have recovery, for any judgment that might be delivered in Robert's favour could not be executed against James, for he has only a bailiff's estate; nor against Alice nor G., for they have only a life estate; and you cannot deny that. Therefore this Court gives judgment that Robert take naught by his writ etc. Judgment.

And the reason was that a judgment in favour of Robert would have been final [as to the fee and right], but such a judgment could not be given, as the other tenants [named in the writ] had no greater estate than a freehold; and a final judgment in Robert's favour would have been ineffective after the death of the life tenants unless the heir, in whose person the fee and right repose, had been named. And further be it noted that if James of Cobham had been present in person he could have abated the writ if no other tenant than T. had been named, because his estate was never more than for a term of years. And note further that an infant within age cannot make recognition of what estate he has in the tenements. And neither that same T. nor his heir was named etc. Therefore etc.

## ANON. v. ANON.

### I.

A woman brought an assize of novel disseisin against several persons. All those named in the writ made default, and the assize was thereupon granted.

The assize came and said that the complainant had been disseised by the persons named in the writ and that she had sustained damage to the amount of ten pounds.

*Stonore*. We pray that the assize may be advised as to the damages to be found; for we say that these were good houses, and the defendants destroyed them completely, so that the complainant was left without shelter for her head; and they took and carried away the timber which they found there, to the value of twenty pounds; and we pray that the assize may be advised.

SPIGURNEL J. Your damages must remain as the assize has found

chateaux enportez suez vostre bref de trespas qar lassise ne deit taxer les damages si noun les issuez de la terre.

et quidem de hoc mirabantur quia statutum W. primum videtur a parte contraria capitulo xl. Et postea le jugement se fist qe la femme recouerist et les damages de x.li. solom le verdit etc.<sup>1</sup>

II.<sup>2</sup>

En un assise de nouel disseisine ou la disseisine troue fut qant il deuerioient estre charges des damages.

*Stonore* dit pur le pleyntef vous deuetez auer regard etc. qe nous vous dioms qe le chief mes est abatu et le meryn enporte de denz les mees et vesseles et autres chateaux a la veillaunce de x.li.

SPYGURNEL en droit de mesons abatuz et boys et autres arbres coupes qi sount annex a soyl il est reson qil eyent regard mes en droit des autres chateaux qi ne sunt fors choes apurtenauntz al tenement etc. vous auetz vostre recouerir par bref de trespas ou par bille si deuant nous etc. et al dereyn les damages furent taxes a x.li. pur quei le jugement etc. sur le verdit.

NOTA.<sup>3</sup>

Nota que les justices ne voleient enquire en une disseisine de chatels emportez mes soulement des chatels atachez en la terre qar il disseent qe hom poeit aver recoverir des autres chatels pur bref de trespas e ceo semble encountre statut qe parle de disseisine fete a roberie etc. Westmonasterio secundo capitulo.

NOTA.<sup>4</sup>

Nota qe mesons abatues et arbres et tiel meinovere en le fraunc tenement vendront par veie des damages <sup>5</sup>quod<sup>6</sup> factum est per statutum Westmonasterii primi capitulo xxxvij.<sup>7</sup> mes des autres chateaux enportez se<sup>8</sup> eide par bille en forme de trespas ou de felonie <sup>9</sup>durant le eyr e hors del eyr par bref de trespas<sup>10</sup> teste HENRICO SPIGURNEL in <sup>11</sup>itinere Cancie.<sup>12</sup>

<sup>1</sup> See note <sup>12</sup> on previous page. <sup>2</sup> Text of (II) from γγ. <sup>3</sup> Note from ε.  
<sup>4</sup> Note from α, β and λ. Text from α collated with β and λ. <sup>5-7</sup> λ omits.  
<sup>6</sup> quia β. <sup>7</sup> xxxv β. <sup>8</sup> de β. <sup>9-12</sup> et ceo par SPIGURNEL λ. <sup>9-10</sup> supplied  
 from β; α omits. <sup>11-12</sup> eodem itinere β.

them ; but, in respect of the chattels carried away, sue out a writ of trespass, for the assize can assess damages in respect of the issues of the soil only.

And this, in truth, set men wondering, for the first Statute of Westminster, chapter xl, would seem to say the contrary.<sup>1</sup> And judgment was afterwards given that the woman should have recovery, with damages in the sum of ten pounds, in accordance with the verdict etc.

## II.

In an assize of novel disseisin a question arose, after a finding of disseisin, as to what damages might be given.

*Stonore*, for the plaintiff, said : You must take into consideration etc. for we tell you that the principal mansion house was pulled down and the timber inside it carried away, beside utensils and other chattels to the value of ten pounds.

SPIGURNEL J. The jury must take into consideration the destruction of houses and the felling of forest and other trees issuing from the soil ; but in respect of other chattels which are not appurtenant to the tenement etc. you can recover by a writ of trespass, or, before us, by a bill. And in the end the damages were assessed at ten pounds ; and judgment was given in accordance with the verdict.

## NOTE.

Note that under a writ of novel disseisin the Justices would not enquire of [household] chattels that had been taken away [by the disseisor] but only of chattels attached to the soil ; for they said that the complainant might have recovery of the former by writ of trespass, which seems opposed to the second Statute of Westminster, which refers to robbery accompanying disseisin.<sup>1</sup>

## NOTE.

Note that by the first Statute of Westminster, chapter xxxvii, a complainant is entitled to damages in respect of the destruction of houses and the felling of timber and the like within his freehold ; but in respect of the asportation of other chattels he must seek a remedy by a bill of trespass or felony during the Eyre or, if the Eyre be not sitting, by a writ of trespass. By HENRY SPIGURNEL J. in the Eyre of Kent.

<sup>1</sup> See *Introduction*, pp. xix-xx.



BAUQUELL v. WANDLESWORTH.<sup>1</sup>

## Note from the Eyre Roll.

The question for the assize's recognition was:—Si Edmundus de Wandlesworth iniuste etc. disseisiuit Ceciliam que fuit uxor Iohannis de Bauquell de libero tenemento suo in Bordene post primam etc.

Edmund's plea was:—quod non debet ad hoc breue respondere etc. Dicit enim quod ipse tenet predicta tenementa posita in visu coniunctim cum quadam Elizabetha uxore sua et tenuit die impetracionis etc. Et profert duas cartas quarum una testatur quod quidam Philippus de

I.<sup>2</sup>

Nova Disseisina par tenant par elegit par reconisaunce le baron vers le baron soul.

<sup>3</sup>Cecil qe fust la femme Jon de Bacwelle<sup>4</sup> porte assise de novel disseisine vers Esmond de A.<sup>5</sup> et sa pleint estre disseisi<sup>6</sup> de xiiii. acres de terre etc.<sup>7</sup>

*Pass.* Sire Edmond vous respond et dit qil ne peut ceste reconisance oyer qar il nad rien en ceus tenementz si noun ioynt ove une Alice sa femme nient nome en le bref. Jugement de bref et mist avant chartre qe ceo tesmoygnea.

*Toud.* Sire <sup>8</sup>nous vous dioms qe<sup>8</sup> Edmond fut tenuz a nous en <sup>9</sup>une certaine dette par une reconisance etc.<sup>10</sup> a paier a certain jour a quel jour il ne paia point par qey nous siwymes qe ceus tenements nous furent livreiz en noun de frank tenement a tenir taunt qe la dette feust leve <sup>11</sup>issi feumes nous seisi taunt qe par lui disseisi et demandoms jugement del houre qe par vertu de sa conisance demene feumes seisie et peus par lui mesme disseisi et demandoms jugement sil soit meste en ceo cas de nomer sa femme.<sup>11</sup>

<sup>1</sup> Reported by *a*, *aa*, *β*, *γ*, *γγ*, *ε*, *κ*, *κκ* and *λ*. Names of the parties from E.R.

<sup>2</sup> Text of (I) from *γ* collated with *ε* and *κκ*.

<sup>3-4</sup> Une Cecille Bacell *κκ*.

<sup>4</sup> Baukwell *ε*.

<sup>5</sup> Bars *ε*; Wandesworth *κκ*.

<sup>6</sup> etc. *κκ*.

<sup>7</sup> *κκ* adds

Edmond vint en propre persone. <sup>8-8</sup> from *ε*.

<sup>9-10</sup> en lescheke en *xli*.

*xix.s. iiijd. κκ.*

<sup>11-11</sup>

pur quei il nestut mye qe A. soit nome de pus gele ne fust partie a la reconisance ne partie al bref par la quel la seisine nous fust liure. *Stanh.* ad idem. Si A. dust estre nome en le bref il couendra a force de ley gele pust estre partie al jugement et qe le jugement se pust tailler deuers lui issint gele pust estre barre par my tel jugement mes si ele fust nome et jugement passast et E. deuiast nient contre esteant le jugement auantdit si aueroit A. son recouerir par le cui in vita ergo ele dust estre nome en vein et a tel recouerir deust ele avenir si ele en le bref ne fust pas nome. *Pass.* Statut voelt qe si home alege ioint feoffement deuant Justices en plai dassise et le pleintif ne pust ceo dedire ne voille qe le bref se abatera et de pus qe nous auoms allegge ioint feoffement et vous ne vollet ceo dedire si le bref se abatesist ceo serroit encontre statut. *Stanh.* Vostre accion de ceste assise prent sa neceance dune dette ou femme de lei viuant soun baroun a nul obligance ne conisance de dette estre partie pur quoi si ele fust nome si suposeroms chose encontre ley saver qe ele pust estre partie a tele reconisance *κκ*.

## BAKEWELL v. WANDSWORTH.

Note from the Eyre Roll—*continued*.

Bordeneshale dedit et concessit quamdam partem predictorum tenementorum ipsi Edmundo et predictæ Elizabethæ et heredibus ipsius Edmundi etc. Et alia carta testatur quod quidam Iohannes filius Elie concessit eisdem Edmundo et Elizabethæ residuum predictorum tenementorum tenendum in forma predicta etc. unde dicit quod non potest expectare predictam assisam sine predicta Elizabetha que non nominatur in breui etc. unde petit iudicium de breui etc.

Postea predicta Cecilia petiit licenciam recedendi de breui suo et habuit etc.<sup>1</sup>

## I.

Novel disseisin where the tenant entered under an *elegit* granted by virtue of the husband's recognition. The writ is brought against the husband alone.

Cecily that was wife of John of Bakewell brings assize of novel disseisin against Esmond of A. and complains that she has been disseised of fourteen acres of land etc.

*Passeley*. Sir, Edmund replies to you and says that he cannot hear this recognition, for he has naught in the tenements save jointly with one Alice his wife who is not named in the writ. Judgment of the writ. And he tendered a charter in proof.

*Toudeby*. Sir, we tell you that Edmund was bound to us by a recognition etc. in respect of a certain debt to make payment upon a certain day ; upon which day he did not pay, and we thereupon brought action seeking that the tenements in question should be delivered to us to hold as of freehold until the debt should be discharged ; and so we were seised until we were disseised by him ; and, since we were seised in virtue of his own recognition and were afterwards disseised by him, we ask judgment whether, in the circumstances, it is necessary to name his wife.

<sup>1</sup> m. 5.

*Fris.* Si Esmond fust a demander ceus tenementz il ne pout aver accioun saunz sa femme par quey etc.

*SPIG.* ad idem nous veoms bien qe Esmond peut fere reconisance de chatel et qe homme avera<sup>1</sup> execucioun vers lui mes vostre accioun est ore a recoverir un franktenement en le qel il nad rien si noun joynt ove sa femme il semble meste qe sa femme soit nomee.

<sup>2</sup>*Stonore* et si la femme soit nomee il covent qe la jugement se taille aussi bien vers la femme come vers le baron et ceo serroit contre ley—quod non fuit a Iusticiis concessum.

*Toud.* a nomer la femme serroit saunz cause qar soit ele nomee ou <sup>3</sup>ne mie<sup>3</sup> apres le deces son baron se peut ele descharger par le cui in vita par qey il nest plus de meste de nomer la femme en cesti bref qil ne feust en bref de seisine sur la reconisance.<sup>4</sup>

*HERVY*<sup>5</sup> nous ne chaungeroms la comune ley pur la cause de vostre recoverir mes la cause de vostre recoverir est foundu sur ley especial et le plee qe vous ore pledez est tut a la comune ley et a commun ley le baron ne peut respondre del droit sa femme saunz ceo qele ne soit nomee etc.

*SPIG.* ad idem pur ceo qe vous avez dit qe tut soit la femme nomee vous ne recoverez rien<sup>6</sup> vers lui par jugement jeo vey qe si homme aliene le droit sa femme et peus disseise le feffe il navera mie lassise vers le baron saunz nomer la femme et si avera la femme apres le deces son baroun le cui in vita a recoverir mesme les tenementz nient countre-esteaut le jugement a qel ele feust partie etc. aussi de ceste part etc.

*Toud.* pria conge de querir meillour bref etc. <sup>7</sup>et habuit.<sup>7</sup>

## II.<sup>8</sup>

Novel disseisine pur cely qi auoit recouery par statut marchaunt et fut disseisi et pur ceo qe la femme le tenaunt fut iontfeffe et nient nomee en le bref il pria conge de quere meliour bref et habuit.

Cecilie que fut la femme Johan de Bauquelle<sup>9</sup> porta un assise de novel diseisine vers Edmond de W. et mist en sa vewe et en sa plainte xiiij.<sup>10</sup> acres de terre et une rode.

*Stonore.* Sires nous navoms riens en ceus tenemenz si noun iont ove Cecilie nostere femme nient nomee en ceste bref jugement du bref et mist avaunt fet qe ceo tesmoigna.<sup>11</sup>

<sup>1</sup> auer KK. <sup>2-4</sup> KK omits. <sup>3-5</sup> nient nomee €. <sup>6</sup> KK adds ad idem. <sup>6</sup> nient KK. <sup>7-7</sup> from KK. <sup>8</sup> Text of (II) from a collated with β and λ. The note in β is:—Novel disseisine porte par celui qe fust tenant par statut marchaunt ou joynt feffment fust alegge et le baroun soule fust oblige par statut marchaunt saunz la femme de lour joynt purchace et le bref ne pout estre meyntenue sanz nomer la femme: et pria conge. <sup>9</sup> Baukwelle β. <sup>10</sup> iiij. β; xxiiij. λ. <sup>11</sup> teumoyna β.



*Friskeney.* If Esmond were to demand these tenements he could not have action without his wife ; consequently etc.

SPIGURNEL J., *ad idem.* We can very well see that Esmond could make a recognition in respect of chattels, by which execution might be had against him, but your present action is to recover a freehold in which he has naught save jointly with his wife ; and we are of opinion that his wife ought to be named.

*Stonore.* But if the wife be named then judgment must go against the wife as well as against the husband ; and that would be opposed to the law—but the Justices would not allow this.

*Toudeby.* To name the wife would serve no purpose ; for, whether she be named or not, she could exonerate herself, after her husband's death, by the *cui in vita*. Consequently there is no more need to name the wife in this writ than there would be in a writ [to the Sheriff] to give seisin after recognition by assize.

STAUNTON J. We are not going to alter the common law to meet your recovery. Your recovery is based upon the statute, while you are pleading entirely at the common law ; and, by the common law, the husband cannot answer in respect of his wife's right unless she be named etc.

SPIGURNEL J., *ad idem.* Though you have said that even if the wife were named naught could be recovered against her by judgment, I see that if a man alienate his wife's right and afterwards disseise the feoffee the latter will not get an assize against the husband without naming the wife ; and the wife, after her husband's death, will have her *cui in vita* for the recovery of the same tenements, notwithstanding the judgment to which she was privy. So here etc.

*Toudeby* prayed leave to sue out a better writ, and he had it.

## II.

Novel disseisin brought by one who had entered under Statute Merchant and was disseised. Because he had not named in his writ the wife of the tenant, who was jointly feoffed with him, he prayed leave to sue out a better writ, and had it.

Cecily that was wife of John of Bakewell brought an assize of novel disseisin against Edmund of W. and put in view in her plaint fourteen acres and one rood of land.

*Stonore.* Sirs, we have naught in these tenements save jointly with Cecily our wife who is not named in this writ. Judgment of the writ—and he tendered a deed in proof.

*Toud.* il nest paas mester qe le soit nomee kar mesme celui Edmond soul<sup>1</sup> se obliga a nous en leschekqer en <sup>2</sup>vj. li. xix. s. ij. d.<sup>3</sup> a payer a certeine jour et nous apres le jour passe suymes bref et avioms la moite des terres par fourme<sup>4</sup> destatut et issi sumes<sup>5</sup> seisi et Edmond soul nous disseisi.

*Wescote.* vous estes a recoverir franc tenement mes ceo ne poetz vous mie si vous neiez tenaunt.

*Toud.* a nomer la femme ne sereit qe veine chose qe tut fut ele nomee ele ne poeit mie countrelouter<sup>6</sup> nostre actioun ne le jugement ne parfounereit paas encountre la femme <sup>7</sup>qe avera soun recoverir apres la mort soun baroun.<sup>8</sup>

*Frisk.* si le baroun fut ouste par un estraunge et il portast soun bref saunz nomer la femme le bref serreit malvois.<sup>9</sup>

*Toud.* nest poynt semblable qe la serreit soun recoverir a terme de vie mes nous ne sumes point<sup>10</sup> a recoverir mes pur un temps tant qe la dette soit leve.

*SPIG.* ne veoms al oel<sup>11</sup> qe Edmond nad reins si noun joint ove sa femme et qe Edmond soul se obliga mes pur ceo qe nous ne savoms si la dette seit pleinement paye<sup>12</sup> ou noun nous voloms aviser.

E puis la partie pria conge de quere meillour bref<sup>13</sup> et habuit.

*SPIG.* nous veoms bien qe baroun put fere reconisaunce del chatel dount home peut user vers lui soul execucioun mes de puis vostre accioun est a recoverir un franc tenement en le quel il nad rien si noun joint ove sa femme il semble mester qe sa femme soit nomee.

*Toud.*<sup>14</sup> si la femme soit nomee le jugement <sup>15</sup>se taillera<sup>16</sup> devers la femme et issi serreit ele chargee apres la mort soun baroun quod est falsum.

*HERVI.* vostre recoverir est a la lei especial et vostre plee qe vous pledez a comune lei ou baroun ne pout respoundre de droit sa femme saunz ceo qe sa femme soit nomee.

*SPIG.* si un homme aliene le dreit sa femme et puis disseisi le feffe il navera mie lassise<sup>17</sup> si la femme ne soit nomee et si avera la femme apres soun deces le cui in vita nient countre esteant le jugement qe se fit encountre la femme.

### III.<sup>18</sup>

<sup>19</sup>Cecile de Baukele<sup>20</sup> porta un assise de novel disseisine vers Edmond de Wyndelisword<sup>21</sup> et se pleit etc. de son franctenement en B.

Novel  
disseisine.

<sup>1</sup> *β* omits.      <sup>2-3</sup> *vj. li. xxx.s. ij.d. β; xj. li. x.s. λ.*      <sup>4</sup> *force β.*  
<sup>5</sup> *fumes β.*      <sup>6</sup> *contre luter β.*      <sup>7-8</sup> *λ omits.*      <sup>9</sup> *mauveys β.*  
<sup>10</sup> *β omits.*      <sup>11</sup> *oyle β.*      <sup>12</sup> *from β; a has etc.*      <sup>13</sup> *The report in λ ends at this point.*  
<sup>14</sup> *Sionore β.*      <sup>15-16</sup> *deit tailler β.*      <sup>17</sup> *la seisine β.*      <sup>18</sup> *Text of (III) from γγ collated with κ.*      <sup>19-20</sup> *Cecyle Bauquelle κ.*      <sup>21</sup> *Wenteworth κ.*

*Toudeby.* There is no need for her to be named, for this same Edmund bound himself alone to us in the Exchequer to pay to us £6 19s. 2d. upon a certain day ; and when that day had passed we sued out a writ, and we received a moiety of the land under the statute, and we were seised, and Edmund alone disseised us.

*Westcote.* You are seeking to recover a freehold, but you cannot do that unless you lay a tenant.

*Toudeby.* It would be futile to name the wife, for even if she were named she could not rebut our action, nor could judgment be executed against the wife, for she will have her recovery upon her husband's death.

*Friskenev.* If the husband were ejected by a stranger and brought his writ, it would be bad unless he named his wife.

*Toudeby.* The case is not a parallel one, for there he would be seeking to recover a term of years ; but we are not seeking to recover that, but to recover until the debt be paid.

SPIGURNEL J. We are not agreed ; for Edmund has naught save jointly with his wife, and Edmund alone bound himself. But, seeing that we do not know whether the debt has been fully paid or not, we will advise ourselves.

And afterwards the demandant prayed leave to sue out a better writ and had it.

SPIGURNEL J. We agree that the husband can make such a recognition in respect of chattels as will entitle a man to have execution against him alone ; but since your action is to recover a freehold in which he has naught save jointly with his wife, we are of opinion that the wife ought to be named.

*Toudeby.* If the wife be named judgment will be rendered against the wife, and so she would be chargeable after her husband's death ; but she could not, in fact, be charged.

STAUNTON J. You are bringing your recovery under the statute while you are pleading under the common law, according to which the husband may not answer in respect of his wife's right unless she be named.

SPIGURNEL J. If a man alienate his wife's right and then disseise the feoffee, the latter will not get an assize unless he join the wife, and the wife will have her *cui in vita* after her husband's death, notwithstanding the fact that the judgment was rendered against her.

### III.

Cecily of Bakewell brought an assize of novel disseisin against Edmund of Wandsworth and complained etc. in respect of her freehold in B.

Novel  
disseisin.



*Passeleu.* Edmond vous dit qil nad rien en ceaux tenementz si non ioynt oue A. sa femme nient nome en le bref jugement etc. et de ceo myst auant fait.

*Toudebi.* Edmond sey conust estre tenez a nous<sup>1</sup> en une certeyne dette a paier a certain jour a qel iour il ne paya pas pur quei ele suwyt le bref Elegit dauer la moyte de ces terres par estente etc. si la etc. par qel bref ceuls tenementz luy furent liueres a tenir en noun de franc tenement par quei de pus qe nous recouerames vers luy soul par cele reconnaissance et il soul nous ad disseisi iugement si nous ne seoms tenant assetz suffisaunt en nostre bref de puis qe nous clamames forsque estat a terme des aunz en noun de franc tenement.

SPYGURNEL si vous voiletz dereigner la possession hors de la mayn etc. et par ceste bref il couent nomer Alice qi est ioynt tenant en vostre bref.

*Toudebi* il ne couent mye qe Alice soyt nome etc. qar si ele fut nome ceo serreit a supposer qe le jugement performireit et tendreit len auxi bien deuers Alice come deuers son baron quod falsum est pur ceo qe nous ne pouns recouerer estat en ceo forsque pur le temps le baron qar si Edmond portast soul lassise saunz nomer la femme le bref sey abatereit auxi par de sa.

STAUNTONE statut ne restreynt comune ley hors de paroles del estatut dount tut vous doune statut une assise de la moyte des teres taunque etc. et lassise pur recouerir par taunt nensut il mye par vostre recouerir qil ne sera pursuy a la comune ley pur quei il semble qe a la comune ley vostre breve est abatable par ioynt tenance.

*Toudebi* ut prius.

SPYGURNEL si E. baron Alice vous ust enfeffe du droit sa femme et pus il vous ust disseisi il vous couent porter lassise vers E. et A. sa feme autrement lassise sei abatereit pur ceo qe la ioynt tenance la femme nest pas defet par la disseisine son baron auxi en ceo cas pus qe vostre plee est en ceo cas a la comune ley mes qe vostre entre fut par statut etc. E pur ceo agardez vos jugementz. <sup>2</sup>et fuerunt ad iudicium super predicta.

*Toud.* pria conge de querir meilour bref etc.<sup>2</sup>

<sup>1</sup> κ adds en lescheker.

<sup>2-2</sup> from κ.

*Passeley.* Edmund tells you that he has naught in these tenements save jointly with A. his wife, who is not named in the writ. Judgment etc.—and he tendered a deed in proof.

*Toudeby.* Edmund made recognition that he was bound to us in a certain debt to be paid upon a certain day ; upon which day he failed to pay it, and thereupon Cecily sued out a writ of *elegit* claiming half these lands by valuation etc. if etc. and under that writ these tenements were delivered to her to hold as of freehold. Therefore, since we recovered against Edmund alone by virtue of his recognition, and since he alone has disseised us, judgment whether we do not sufficiently lay tenancy in our writ, since we are only claiming an estate as of freehold for a term of years.

SPIGURNEL J. If you want to recover the possession from the hands of etc. and by a writ of this kind, you must name Alice, who is joint tenant, in your writ.

*Toudeby.* We need not name Alice etc., for to name her would be to suppose that one could have and execute judgment against her as well as against her husband ; and that is not so, as we cannot recover any estate beyond the husband's lifetime ; for if Edmund alone were to bring an assize without naming his wife the writ would abate. And the same principle applies here.

STAUNTON J. Statute law does not alter common law unless it expressly purports to do so. Consequently, though the statute gives you an assize for the recovery of a moiety of the lands until etc. it does not follow that you are not bound by the common law in regard to your procedure ; and by the common law we are of opinion that your writ is abatable by the plea of joint tenancy.

*Toudeby as before.*

SPIGURNEL J. If E., Alice's husband, had enfeoffed you of his wife's right and had afterwards disseised you, you would have to bring your assize against E. and A. his wife ; for otherwise the assize would abate, as the joint tenancy of the wife is not defeated by the husband's delivery of seisin. So in this case ; since you are pleading by the common law although your entry was by statute. And therefore abide your judgments. And they abode judgment on the above arguments.

*Toudeby* prayed leave to sue out a better writ etc.

WOLTON v. HAUTE.<sup>1</sup>

## Note from the Eyre Roll.

Assisa venit recognitura si Ricardus de Haute Henricus le Crede Robertus Kochel et Henricus de Haute iniuste etc. disseisiuerunt Iohannem filium Ade de Wolton de libero tenemento suo in Magna Chert et Estkyngessnode post primam etc. . . . Postea predictus Iohannes non est prosecutus. Ideo

I.<sup>3</sup>

Nova disseisina ou fut alegge qe le ael le tenant avoyt recoveri vers le ael le pleyntif par bref de eschet et il devia devant lexecusion par quay bref fut suy vers tenant des tenemenz et recoveri Et fut dit qe il volayt recoverir ceo qe il ne poayt par ley tenir.

Jon le fitz Adam de Weltone<sup>4</sup> porte assize de novel disseisine vers Richard de Haute <sup>5</sup>Henry de Haute<sup>5</sup> et autres nomez <sup>6</sup>en le bref<sup>6</sup> et se pleint estre disseisi de <sup>7</sup>son franktenement en C. et mist<sup>8</sup> en sa plainte<sup>9</sup> xxv. acres<sup>10</sup> de terre etc.<sup>10</sup> Ces<sup>11</sup> touz<sup>12</sup> hors pris<sup>12</sup> Richard et Henry<sup>13</sup> disoient qil navoient rien etc.<sup>13</sup> Richard respond com tenant <sup>14</sup>des ix. acres et qaunt a vj. acres il dit qil entra par le feffement son ael etc. saunz tort fere et qaunt a iij. acres il dit nul tort etc.<sup>14</sup> Henry respond com tenant de xvj.<sup>15</sup> acres et dit Assise ne doit estre qar Willem de Haute son ael porta bref de escheat vers Roger de Grastere<sup>16</sup> ael cesti Jon qi se pleint devant justices en baunk <sup>17</sup>certein <sup>18</sup>jour et terme<sup>19</sup> et recoveri par jugement peus apres pur ceo qe execucioun ne se fist point mesme cesti Henry <sup>20</sup>siwy de fere<sup>20</sup> venir le record devant le roi hors de quel record il avoit bref de garnir lavant dit Roger sil seust rien dire pur qey execucioun ne se deust fere solom le<sup>21</sup> jugement etc. Le vicounte retourna qe Roger fust mort par qey issist bref de garnir le tenant<sup>22</sup> des tenementz<sup>23</sup> etc. par vertu de qel bref un Robert Keche<sup>24</sup> tenant de ceus tenements<sup>25</sup> adonques fust garny qe ne vynt point par qey execucioun fust agarde etc. et sur ceo le viscount par bref<sup>26</sup> mist en seisine mesme cesti Henry et demandoms jugement si assise deyve estre saunz ceo

<sup>1</sup> Reported by a, aa, β, γ, γγ, δ, ε, ζ, κ and κκ. <sup>2</sup> m. 12. <sup>3</sup> Text of (I) from γ collated with δ, ε and ζ. Head note from ζ. <sup>4</sup> Walton δ. <sup>5-6</sup> Henry ε. <sup>6-6</sup> etc. ε. <sup>7-9</sup> ε, ζ omit. <sup>8</sup> δ adds en vew et. <sup>10-10</sup> en Kenter etc. ε; ov les etc. en chert etc. ζ. <sup>11</sup> ζ omits; δ, ε add tres. <sup>12-12</sup> feseient defaute excepte ζ. <sup>13-13</sup> ζ omits. <sup>14-14</sup> qant al parcel qe nul tort etc. ζ. <sup>15</sup> xv. δ; xj. ε. <sup>16</sup> Castro ζ. <sup>17-19</sup> lan etc. en le terme etc. ε. <sup>18-19</sup> an etc. ζ. <sup>20-20</sup> fist ε. <sup>21</sup> ζ adds primer. <sup>22</sup> gardein δ. <sup>23</sup> ζ adds del franktenement. <sup>23-25</sup> qi δ. <sup>24</sup> de Berk ζ; and so throughout. <sup>25</sup> ζ adds le Roy.



## WALTON v. HOATH.

Note from the Eyre Roll—*continued*.

consideratum est quod predicti Ricardus et alii eant inde sine die et predictus Iohannes et plegii sui de prosequendo in misericordia. Nichil de plegiis quia per fidem etc.<sup>2</sup>

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## I.

Novel disseisin where it was alleged that the tenant's grandfather had recovered against the demandant's grandfather by a plea of escheat but died before execution. Whereupon a writ was sued out against the tenant of the tenements and recovery had. And it was argued that the demandant wanted to recover what the law would not let him hold.

John the son of Adam of Walton brings an assize of novel disseisin against Richard of Hoath, Henry of Hoath, and others named in the writ, and complained of being disseised of his freehold in C., and laid in his plaint twenty-five acres of land etc. All these, save Richard and Henry, said that they had naught etc. Richard answers as tenant of nine acres ; as to six of which he says that he entered by the feoffment of his grandfather without doing any wrong ; and as to the other three acres he says that he has done no wrong etc. Henry answers as tenant of sixteen acres and says that the assize ought not to pass, for William of Hoath, his grandfather, brought a writ of escheat against Roger of Graveney, this same John's grandfather, and made his plaint on a certain day and term before the Justices in Bank and recovered by judgment ; and, afterwards, this same Henry, seeing that such judgment had not been executed, sued that the record might be brought before the King ; and upon that record he had a writ to give notice to the aforesaid Roger that if he had aught to say why execution should not be done in accordance with the judgment etc. The Sheriff returned that Roger was dead. Whereupon a writ was issued to give notice to the tenant of the tenements etc., by virtue of which writ one Robert Ketch, tenant of these tenements, received notice, but he did not come, and execution was consequently awarded etc. ; and thereupon the Sheriff, by his writ, put this same Henry in seisin, and we ask judgment whether the assize ought to pass unless the complainant

qil ne moustre title coment franktenement lui soit peus acru <sup>1</sup>de mesme les tenements.<sup>1</sup>

*Hengham*<sup>2</sup> nostre ael vers qi il alegge cest recoverir<sup>3</sup> morust seisi en son demesne com de fee de mesme les tenementz apres qi mort nous entrames<sup>4</sup> com heir et seisi feumes tauntqe par eux disseisi etc. saunz ceo qe unqes garni ne feumes ou agard ou jugement vers nous fet et prioms lassise.

*Westcote* vous avez entendu coment nous avons dit qe nostre ael recoveri <sup>5</sup>les tenementz<sup>5</sup> vers son ael par jugement etc. et coment nous <sup>6</sup>siwymes<sup>7</sup> de<sup>8</sup> garnir le sil seust rien dire par qey <sup>9</sup>execucioun<sup>9</sup> etc. et pur ceo qe le vicounte retorna qil fust mort etc. avioms bref de garnir R. Keche adonqes tenaunt de tenementz ut supra qi ne vynt point par qey la seisine nous feust livere et vers autres qe vers le tenaunt <sup>10</sup>des tenementz<sup>10</sup> ne purrioms execucioun aver <sup>11</sup>et demandoms<sup>11</sup> jugement ut supra si assise devie estre.

*Hengham* nous avons dit qe unqes garnicement a nous ne vynt ne jugement vers nous ne se fist et vous dioms qe cesti R. Keche vers qi vous alegez cest execucioun estre fet si est mesme<sup>12</sup> disseisor de mesme les tenementz et nome disseisor<sup>13</sup> ovesqe vous qele disseisine nest mie uncore purgee. <sup>14</sup>Par quei nous demandoms<sup>14</sup> jugement si par execucion fet <sup>15</sup>vers mesme<sup>16</sup> disseisor peusez ceste assise<sup>17</sup> targer.

*Toudeby* si vous recoveriez par ceste assise ceo ne serroit<sup>18</sup> mes<sup>19</sup> qe a chacer la partie a un<sup>20</sup> autre <sup>21</sup>bref de<sup>21</sup> execucioun qe serroit inconvenient de <sup>22</sup>ley del houre<sup>22</sup> qil est entre par jugement etc. qar vostre recoverir ne serroit autre mes recoverir ceo qe <sup>23</sup>vous ne poez retenir.<sup>23</sup>

*HERVY* <sup>24</sup>ad idem<sup>24</sup> la ou vous avez dit qe vostre auncestre<sup>25</sup> morust seisi en son demesne etc. il dit qe son ael recoveri vers vostre ael par jugement et en ceo cas voilent aucune gent dire qil ne morust pas seisi en son demene com de fee pur ceo qil avoit recoveri le fee par jugement etc. qe <sup>26</sup>si est<sup>26</sup> solempne. Estre ceo il vous plede mout fort qar il alegge un jugement vers vostre ael a qel par ley vous estes mesme partie mes autre serroit dun jugement vers estraunger par qey il covent qe vous respondez a ceo.

*Pass.* ad idem nous avons dit qe nous recoverimes par jugement vers vostre ael et einz sumes par execucioun etc. dount nous tenimes de

<sup>1-1</sup> ζ omits.      <sup>2</sup> δ, ε add Sire nous vous dioms qe; ζ adds Sire nous voloms averrer qe.      <sup>3</sup> record δ.      <sup>4</sup> ζ adds mesme les tenemenz.      <sup>5-5</sup> ε omits.  
<sup>6-6</sup> feisimes δ.      <sup>7</sup> ζ adds bref.      <sup>9-9</sup> ε omits.      <sup>10-10</sup> de Franktenement ζ.  
<sup>11-11</sup> ε, ζ omit.      <sup>12</sup> nostre δ, ε, ζ.      <sup>13</sup> δ, ε add en nostre bref; ζ adds en  
mesme le bref.      <sup>14-14</sup> from ε.      <sup>15-16</sup> devers nostre δ.      <sup>18</sup> nostre ε, ζ.  
<sup>17</sup> execucion δ.      <sup>18</sup> ζ adds autre ren.      <sup>19</sup> my a δ.      <sup>20</sup> ζ omits.  
<sup>21-21</sup> ζ omits.      <sup>22-22</sup> pus ζ.      <sup>23-23</sup> ne put estre recoveriz δ.      <sup>24-24</sup> δ omits.  
<sup>25</sup> heir δ; aiel ε, ζ.      <sup>26-26</sup> est si ε, ζ.

show by what title a freehold in these same tenements subsequently accrued to him.

*Hengham.* Our grandfather, against whom Henry alleges that this recovery was got, died seised of these same tenements in his own demesne as of fee. Upon his death we entered as heir, and were seised until we were disseised by them etc. without our ever having received notice and without award or judgment having been made against us, and we pray the assize.

*Westcote.* You have heard how we said that our grandfather recovered the tenements against the complainant's grandfather by judgment etc., and how we sued out a writ to give him notice that if he could say aught by which execution etc. and how, because the sheriff returned that he was dead, we had a writ to give notice to R. Ketch, then tenant of the tenements, *as above*, who did not come. Wherefore the seisin was delivered to us. Against others than the tenant of the tenements we could not have execution; and we ask judgment *as above* whether this assize ought to pass.

*Hengham.* We have said that we never received any notice and that judgment was not given against us; and we tell you that this R. Ketch, against whom you allege that this execution was granted, is himself a disseisor of these same tenements and is named as a disseisor together with yourself, and that disseisin of his is not yet purged. Wherefore we ask judgment whether by an execution granted against this same disseisor you can delay this assize.

*Toudeby.* If you were to recover by this assize the only effect would be to drive the defendant to another writ of execution, which would be against the principle of the law, seeing that he entered by judgment etc. and your recovery would be naught more than a recovery of what you cannot keep.

STAUNTON J., *ad idem.* Whereas you [the complainant] have said that your grandfather died seised in his own demesne etc., he [the defendant] tells you that his grandfather recovered by judgment against your grandfather; and there be those who say that in these circumstances your grandfather did not die seised in his own demesne as of fee, since the other had recovered the fee by judgment etc. which is so weighty a thing. Again, he makes a very strong point against you when he pleads a judgment against your grandfather to which you yourself were, in the eyes of the law, party. It would have been different if the judgment had been against a stranger. Wherefore you must answer that.

*Passeley, ad idem.* We have said that we recovered by judgment against your grandfather and we are in by execution etc. Since, then,



lei tute la seisine del meen temps <sup>1</sup>nule etc.<sup>1</sup> qar <sup>2</sup>nous sumes einz par executioun par vertue del jugement de plus haut qe vostre seisine <sup>3</sup>par qei etc.<sup>3</sup>

*Westcote* ad idem<sup>4</sup> vous navez autre recoverir qe par bref de droit etc.<sup>5</sup>

II.<sup>6</sup>

<sup>7</sup>Jon de Waltone<sup>7</sup> porte assise de novel disseisine vers Richard de Haute <sup>8</sup>Henry de Haute<sup>8</sup> et autres nomez en le bref.

*Stonore*. Qant a un mees iij. acres de terre touz nomez en le bref vous<sup>9</sup> diunt qyl unt fet nul tort ne nul disseisine etc. Henry de Haute<sup>10</sup> vous respond com tenaunt de meymes les tenemenz<sup>11</sup> qe un Thomas nostre ael ascum tens<sup>12</sup> porta bref de eschete vers Jon de Crasteye<sup>13</sup> auncestre meyme cesti Jon qy heyr il est deuaunt Sire Jon de Metingham etc. et recouera<sup>14</sup> et auaunt qe il auoit execucion il morust pur quey nostre pier<sup>15</sup> T. de Haute suyst le scire facias uers Jon de Crasteye et<sup>16</sup> pendaunt ceo plee Jon morust. Nostre pier<sup>15</sup> suyt autre bref uers son heyr a quel bref le vesconte retorna qe le heyr auioit<sup>17</sup> rien mes un Jon Cuchel<sup>18</sup> fut tenaunt de ceux tenemenz et nostre auncestre suyt bref vers ly <sup>19</sup>de ly<sup>19</sup> garnir qyl venisit a sauver moustrer<sup>20</sup> sil sauoit rien dire pur quey nous ne devons execucion auer. A quel bref J. Cuchel<sup>18</sup> ne vynt point pur quey fut agarde qe nous eussoms<sup>21</sup> execucion et issi sumes nous eynz et demandoms jugement si saunz moustrer title plus tardif assise deuie estre.

<sup>22</sup>Et pur ceo qe *Jon de*<sup>22</sup> *Stonore* auoit desclos le cas si auaunt qe par son respons auoit<sup>23</sup> done cause <sup>24</sup>del assise<sup>24</sup> en taunt qe<sup>25</sup> il alegga le darayn recouerer par le scire facias vers cely qy fut estraunge pur quey <sup>26</sup>*Gilbert de Toudeby* vist<sup>26</sup> qe son respons ne les <sup>27</sup>oghta poynt<sup>27</sup> del assise et dona la excepcion plus ouerte et dit qe Sire Thomas de Haute nostre ael recouerit<sup>28</sup> ceux tenemenz par jugement uers son auncestre Jon de Crasteye<sup>29</sup> qy heyr il est et eynz sumes jugement si assise deuie estre saunz moustrer<sup>30</sup> title plus tardif puy nostre recouerer.<sup>31</sup>

*Ingham*. il puet estre od<sup>32</sup> ma pleynte qe uous recoueristes et qe vous <sup>33</sup>estre eynz<sup>33</sup> par disseisine.

STANTONE.<sup>34</sup> grauntez ceo qyl unt<sup>35</sup> dit et demorez en <sup>36</sup>nos jugements<sup>36</sup> ou il couient qe vous facez<sup>37</sup> title plus tardif qe deface lur recouerer.<sup>31</sup>

<sup>1-1</sup> anenti ζ. <sup>2-4</sup> δ omits. <sup>3-3</sup> nest. Jugement. ζ. <sup>5</sup> Post modum non fuit prosecutus ζ. <sup>6</sup> Text of (II) from κ collated with γγ. <sup>7-7</sup> Johan le Fitz Johan de W. γγ. <sup>8-8</sup> et H. de B. γγ. <sup>9</sup> etc. il γγ. <sup>10</sup> γγ adds qi. <sup>11</sup> γγ adds et vous dit. <sup>12</sup> temps γγ. <sup>13</sup> C. γγ. <sup>14</sup> recourist γγ. <sup>15</sup> pere γγ. <sup>16</sup> γγ omits. <sup>17</sup> naveyt γγ. <sup>18</sup> Cotel γγ. <sup>19-19</sup> devers luy de γγ. <sup>20</sup> mounstrer γγ. <sup>21</sup> ussoms γγ. <sup>22-22</sup> γγ omits. <sup>23</sup> il aveyt γγ. <sup>24-24</sup> dassise γγ. <sup>25</sup> cum γγ. <sup>26-26</sup> *Toudeby* vyt bien γγ. <sup>27-27</sup> osta mye γγ. <sup>28</sup> recouera γγ. <sup>29</sup> C. γγ. <sup>30</sup> mostrer γγ. <sup>31</sup> recouerir γγ. <sup>32</sup> oueqe γγ. <sup>33-33</sup> entratis γγ. <sup>34</sup> STAUNTONE γγ. <sup>35</sup> ount γγ. <sup>36-36</sup> jugement γγ. <sup>37</sup> facet γγ.

we were fully seised by law, your seisin during the mean time was null, for we are in by execution granted in virtue of a judgment that overrides your seisin. Wherefore etc.

*Westcote, ad idem.* You have no recovery but by writ of right etc.

## II.

John of Walton brings an assize of novel disseisin against Richard of Hoath, Henry of Hoath and others named in the writ.

*Stonore.* All those named in the writ tell you in respect of one messuage of three acres of land that they have done no wrong nor disseisin. Henry of Hoath answers you as tenant of these same tenements that one Thomas our grandfather at one time brought a writ of escheat before Sir John of Metingham etc. against John of Graveney, ancestor of this same John whose heir John is, and recovered but died before that he had execution; wherefore T. of Hoath, our father, sued out the *scire facias* against John of Graveney; and, while that plea was pending, John died. Our father sued out another writ against his heir, to which the Sheriff returned that the heir had naught, but that one John Cuchel was tenant of those tenements; and our ancestor sued out a writ against this John warning him that he must come, to wit, to show whether he could say aught why we should not have execution. J. Cuchel did not appear to this writ, and thereupon judgment was given that we should have execution, and so we are in, and we ask judgment whether, unless he show a later title, the assize should pass.

And because *John of Stonore* had so stated the facts, as above, as to afford reason for granting the assize, seeing that he alleged the latest recovery to have been got upon a *scire facias* directed to a stranger, *Gilbert of Toudeby* recognised that such a reply would not prevent the complainant from having the assize, and therefore stated the exception more completely, saying that Sir Thomas of Hoath, our grandfather, recovered these tenements by judgment against John of Graveney, the complainant's ancestor, whose heir the complainant is, and we are in. Judgment whether assize ought to pass unless they show a title more recent than our recovery.

*Ingham.* That you recovered and that you are in by disseisin is quite consistent with my plaint.

STAUNTON J. You must either admit what they have said and abide our judgments or you must show a more recent title in avoidance of their recovery.

*Ingham.* Jon de Crasteye<sup>1</sup> morust seisi apres qy mort nous entrames com heyr <sup>2</sup>meym cely Jon<sup>2</sup> et seisi fumes <sup>3</sup>iekes attaunt qyl<sup>3</sup> nous disseisi et <sup>4</sup>ceo est<sup>4</sup> tittle pur nous et prioms lassise.

*Toud.* nous alleggoms le<sup>5</sup> jugement fet vers<sup>6</sup> vostre auncestre et nous eynz par mie cel<sup>7</sup> jugement <sup>8</sup>qe respandez a ceo.<sup>8</sup>

*Ingham.* nous voloms auerer par assise qe nostre pier morust seisi et nous entrames com fiz et heyr et eynz fumes iekes a taunt qe nous fumes disseisi par vous et Jon Cuche<sup>9</sup> et prioms lassise.

*Toud.* nous recouerimes<sup>10</sup> uers Jon Cuchel.<sup>9</sup>

*Ingham.* ceo chet <sup>11</sup>en la assise<sup>11</sup> pur ceo qe Jon Cuchel<sup>9</sup> est nostre disseisour<sup>12</sup> nome en le bref.

*Toud.* dunkes grauntez vous bien qe Jon Cuchel<sup>9</sup> fut tenaunt des tenemenz et nous recouerimes<sup>10</sup> uers ly execucion com uers tenaunt des tenemenz par le recouerir<sup>13</sup> qe nostre ael auoit par jugement vers vostre auncestre qy heyr etc. jugement si assise etc.

STAUNTONE. auisez<sup>14</sup> vous bien de ceo qyl vous dit qar il est en cas de ley <sup>15</sup>il alleggunt<sup>15</sup> un jugement entre vostre auncestre et son auncestre par quel jugement il est eynz quidez<sup>16</sup> vous <sup>17</sup>sil seit<sup>17</sup> entre par jugement qe nous ly oghteroms<sup>18</sup> si nous ne <sup>19</sup>pussez moustre<sup>19</sup> tittle de ly ou de son auncestre qe<sup>20</sup> vous donne<sup>21</sup> tittle plus tardif nanyl qar ceo ne suffit pas qe vostre auncestre morust seisi pus le jugement saunz nouel purchace pur ceo qe qant il perdit <sup>22</sup>par jugement<sup>22</sup> il perdit fee et dreit auxi com lautre recouerit uers ly issi<sup>23</sup> ne puet il pas par ley estre seisi en sa mort qant il perdit saunz nouel tittle et vous estes en cas de ley et pur ceo auisez vous bien.

*Toud.* sire vous moustrez qyl ne puet recouerer par cel assise qar son recouerer durrait askun auantage mes par ceste assise nauerait pas auantage qar meske il recouerist ore nous recoueroms meymes les tenemenz par dreit plus haute pur quey son recouerer serrait en vayne.

*Pass. ad idem.* qant un home perde par jugement le fee et le dreit est hors de sa persone doune tut le meen temps qe altre le tent si est defet apres le jugement par le execucion ore vous auoms dit qe nous recouerames les tenemenz par jugement uers son auncestre et puy auoms execucion par jugement uers cely qy fut en tenaunce et sumes par jugement eynz pur quey tut le meen temps est defet et nous a recouerer ore ceo qe vous ne poez tener par lay serrait encontre le jugement done.

<sup>1</sup> Cantsteie γγ.    <sup>2-2</sup> mesme cesti Johan γγ.    <sup>3-3</sup> tant qe il γγ.    <sup>4-4</sup> cest γγ.  
<sup>5</sup> un γγ.    <sup>6</sup> devers γγ.    <sup>7</sup> cesti γγ.    <sup>8-8</sup> quei responez vous a cel la γγ.  
<sup>9</sup> Cotel γγ.    <sup>10</sup> recouerames γγ.    <sup>11-11</sup> a lassise γγ.    <sup>12</sup> γγ adds et.  
<sup>13</sup> recouerir γγ.    <sup>14</sup> auisez γγ.    <sup>15-15</sup> qil allegge γγ.    <sup>16</sup> quidetz γγ.  
<sup>17-17</sup> qe sil soyt γγ.    <sup>18</sup> ostroms γγ.    <sup>19-19</sup> pussetz mostre γγ.    <sup>20</sup> qi γγ.  
<sup>21</sup> doune γγ.    <sup>22-22</sup> γγ omits.    <sup>23</sup> MS. γγ breaks off with this word.



*Ingham.* John of Graveney died seised. Upon his death we entered as this same John's heir and were seised until the defendant disseised us ; and that is a good title for us, and we pray the assize.

*Toudeby.* We plead the judgment delivered against your ancestor, and we are in by virtue of that judgment. Judgment whether you ought not to answer it.

*Ingham.* We will aver by assize that our father died seised and that we entered as son and heir and were in until we were disseised by you and John Cuchel ; and we pray the assize.

*Toudeby.* We recovered against John Cuchel.

*Ingham.* That is for the assize ; for we say that John Cuchel is our disseisor, so named in the writ.

*Toudeby.* Then you are admitting that John Cuchel was tenant of the tenements and that we recovered execution against him as against the tenant of the tenements by the recovery which our ancestor got by judgment against your ancestor, whose heir etc. Judgment whether the assize etc.

STAUNTON J. Consider well what he tells you, for this is a question of law. They allege a judgment given between your ancestor and his ancestor, by virtue of which judgment the tenant entered. He having entered by judgment, do you suppose that we are going to eject him unless you show us a more recent title acquired either from himself or from his ancestor ? No. It is not sufficient that your ancestor died seised subsequently to the judgment unless he were in by some new purchase ; for, when he lost by judgment, he lost the fee and right which the other recovered against him ; and consequently he could not have been lawfully seised at his death if he lost and did not acquire a new title. This is a question of law ; so consider it well.

*Toudeby.* Sir, you show that he cannot recover by this assize, for a man's recovery should give him some advantage, but no advantage could he get by this assize ; for, even though he were to recover now, we should recover the same tenements by a higher right, and so his recovery would be futile.

*Passeley, ad idem.* When a man loses by judgment he is thereupon divested of the fee and the right. Consequently, all the mean time during which he holds subsequently to the judgment goes for naught upon execution. Now we have told you that we recovered the tenements by execution got against his ancestor ; and, since we got execution against him that was tenant, and since we are in by judgment, all the mean time goes for naught, and to recover from us now what you cannot lawfully keep would be contrary to the judgment given.

*Ingham.* nostre recouerer par ceste assise est necessaire qar puy le jugement vous purriez relessier et quitclamer et puy nous oghter la quitclamaunce nous ne pouns user si noun par vey de respons et depuys qe vous aleggez vers J. Cuchel qy fut nostre disseisour demandoms jugement et prioms lassise.

STAUNTONE. si vous recouerez ore par ceste assise il recouereit meymes les tenemenz com il les unt ore en tenaunce et vostre recouerer nule est depuys qyl sount ore eynz par jugement le quel nest pas unkor defet mes esta en sa force ley ne soefre mie qyl seyent oghtez et chacez a meyme le recouerer qyl auient auaunt etc.

### III.<sup>1</sup>

Jon le fitz Adam de Woltone porte assise de novel disseisine vers Mestre Richard de Haute Henry de Haute et Roger Cokel et se pleint estre disseisi.

*Stanh.* Richard vous dit qe quant au mees et xvj. acres de terre rien nad ne rien ne cleme etc. Et H. vous respond com tenant de mees et de les auantdits xvj. acres de terre et vous dit qun W. de H. soun ael qi heir il est porta un bref descheat vers R. Crasthie ael mesme cesti J. qi porte cesti bref et vers R. sa femme et recouera memes ceux tenemenz par jugement vers les auantdits Robert et Roberge et lexecucion demoura tanqe apres la mort W. et cesti H. apres la mort le dit W. fust aperceu del jugement qe fut taille pur le dit W. soun ael en comun bank deuant Sire J. de Mettingham et ses compaignons lan le Roi Edward xxij. vint et suy de faire venir le record et le proces en le bank le Roi deuant Sire R. de Brabazoun et ses compaignons hors de quel record issit un garnissement al vicomte de garnir lauandit R. et R. de venir a moustre sil seussent rien dire pur quey execucion ne se deit faire et le vicomte retorna queux furent mortz mes il dit qun R. de C. fust tenant pur quoi H. suy un autre garnissement de garnir lauandit R. et tesmoigne fust par le vicomte qil fust garni a quel jour il ne vint pas pur quoi agarde fust qil ust bref al viscounte de lui mettre en seisine et habuit et issint sumes einz par jugement et demandoms jugement si assise deuie estre saunz ceo qil ne moustre tittle de prouuer tenance etc.

*Hengham.* sire nous vous dioms qe R. de G. nostre ael mourust seisi en son demene com de fee etc. apres qi mort nous entrames com

<sup>1</sup> Text of (III) from κκ.

*Ingham.* It is necessary that we should have a recovery by this assize, for it may be that, subsequently to the judgment, you released and quitclaimed to us and afterwards ejected us ; and we cannot use the quitclaim except by way of answer. And as to what you allege in respect of J. Cuchel, we say that he was our disseisor. We ask judgment and pray the assize.

STAUNTON J. If you were to recover now by this assize the tenant would recover the same tenements as he now holds them, and your recovery would be futile ; for since he is now in by a judgment which has not been reversed but is still in force, the law will not allow him to be ejected and forced to get a recovery of what he previously had etc.

### III.

John the son of Adam of Walton brings an assize of novel disseisin against Master Richard of Hoath, Henry of Hoath and Roger Cockle ; and he complains of being disseised.

*Stonore.* As to the messuage and sixteen acres of land Richard tells you that he has naught therein and claims naught. And H. answers as tenant of the messuage and of the aforesaid sixteen acres of land and tells you that one W. of H., his grandfather whose heir he is, brought a writ of escheat against R. Graveney, grandfather of this same J. who is bringing this writ, and against R. his wife, and recovered these same tenements by judgment against the aforesaid Robert and Roberta ; the execution of which judgment was delayed until after W.'s death ; and, after the said W.'s death, this H., being aware of the judgment that was given in favour of the said W. his grandfather in the Common Bench before Sir John of Metingham and his companions in the twenty-second year of King Edward, came and sued to have production of the record and the process in the King's Bench before Sir R. of Brabazon and his companions ; out of which record a writ was issued to the Sheriff calling upon him to give notice to the aforesaid R. and R. to come and show cause why execution should not be had ; and the Sheriff returned that they were dead, but he said that one R. of C. was tenant. Whereupon H. sued out another writ to give notice to the aforesaid R., and it was certified by the Sheriff that such notice had been given. R. did not appear upon the day assigned ; whereupon judgment was given that a writ should issue to the Sheriff to put H. in seisin ; and H. was seised ; and so we are in by judgment, and we ask judgment whether the assize ought to pass unless he show a title in proof of his tenancy etc.

*Ingham.* Sir, we tell you that R. of G. our grandfather died seised in his own demesne as of fee etc. ; after whose death we entered as



heir et fumes seisi tanqe mestre R. H. et R. de C. nous disseisirent et demandoms jugement si par nul garnisement fait a celi qe nous supposoms estre disseisour devons de ceste assise estre barre.

*Westcote.* si vous volet dire qil fust tenant par disseisine jour du garnisement dites le et demouret en jugement et ne pledet nient par supposailles.

*Hengham.* si R. de C. apres ceo qe nous fumes entre les tenemenz apres la mort nostre auncestre nous ust disseisi il ne serroit pas resoun qe nostre accion qe nous avoms deuers lui de cele disseisine par execucion de nul jugement deuers lui dussoms estre barre.

HERVY. ne pledet pas si mes mettet si en fait lexecucion et demourez en jugement et dautre part vous dites qe vostre ael mourust seisi en son demene com de fee etc. asqune gent entendent qe depus qe W. recouera deuers lui par jugement qe le fee et le droit par my cel jugement se vesti en la person le dit W. et issint ne mourust nient vostre auncestre seisi de fee etc.

*Toudebi.* hom deit auer regard al recouerir Henry en ij. choses celui qe voudra soun recouerir defaire sauer de tenz del recouerir et del estat celui qi fust garni mes du temps ceo fust en temps son ael et issint de plus haut etc. et lestat celui qi fust garni vous auet reconu memes il fust tenant par disseisine de franc tenement mes a H. ne fust pas a conustre quel estat il auoit depus qil fust tenant etc. et dautrepart si vous dusset ore recouerir devers H. et chacer lui a nouel garnisement vers vous et vous ne pusset nient vous defauluper [*sic*] del execucion ceo serroit a defaire un jugement par un autre.

HERVY. Johan Toudebi vous dites bien ceo serreit a doner vous par jugement chose qe vous ne pusset retenir mes par accioun de plus haut dusez par jugement perdre.

et sic pendet.

#### IV.<sup>1</sup>

Novel disseisine ou recouerir de plus haut fut allegge et execucioun dil jugement suy par le heir celuy qi recoueri.

Un R. porta un assise de novel disseisine vers W. et W.<sup>2</sup> etc. W. vint com tenaunt et dit qe un soun ael porta bref deschete vers le ael le pleintif et le jugement se fit pur lui e qe adonqe ne fut mie execute et puis sui soun heir le recorde de mesme le jugement vers le tenaunt

<sup>1</sup> Text of (IV) from *a* collated with *β* and *λ*.

<sup>2</sup> B. *λ*.

heir, and we were seised until Master R., H. and R. of C. disseised us, and we ask judgment whether through any notice given to one whom we are supposing to be our disseisor we ought to be barred from this assize.

*Westcote.* If you want to say that he was tenant by disseisin on the day of the notice, say so, and abide judgment, and do not plead by suppositions.

*Ingham.* If, after that we had entered the tenements upon our ancestor's death, R. of C. had disseised us, the fact that we had not had execution of our judgment would not be a reason why we should be barred from the action we have against him for this disseisin.

STAUNTON J. Do not plead after that fashion but rely upon the fact of the execution and abide judgment. And, moreover, whereas you say that your grandfather died seised in his own demesne as of fee etc., there be some here who are of opinion that when W. recovered against him by judgment the fee and the right became vested in W. by virtue of that judgment, to the effect that your ancestor did not die seised of the fee etc.

*Toudeby.* He who wants to defeat Henry's recovery must consider these two points: namely, the time of the recovery, and the estate of him who had notice. As to the time; it was in the time of John's grandfather, and so higher etc.; and, as to the estate of him who had notice, you have admitted that he was tenant of freehold by disseisin; and it was no business of Henry's to find out exactly what estate he had. It was sufficient for him that he was tenant. And further, if you should now recover against Henry and force him to give you fresh notice, you would still not be able to avoid the execution, and the result would be that one judgment would be annulled by another.

STAUNTON J. John Toudeby, you say well. A recovery by judgment here would give you<sup>1</sup> what you could not keep, but must lose by virtue of the judgment in an action of higher nature.

And so the matter remains.

#### IV.

Novel disseisin where a higher recovery and execution of the judgment sued by the heir of him who recovered were pleaded.

One R. brought a writ of novel disseisin against W. and W. etc. W. appeared as tenant and said that a grandfather of his brought a writ of escheat against the plaintiff's grandfather and that judgment was given in his favour but had remained unexecuted; and that afterwards his [grandfather's] heir had sued out the record of this same judgment

<sup>1</sup> sc. the demandant.

de mesmes les tenementz devant le Roi et recoveri et einz est par cel jugement<sup>1</sup> parmi le recoverir qe se fit vers vostre ael qi heir vous estes par quei askune gent volent dire qe fee et droit se veste en la persone celui qe recovery parmi le recoverir issi qe vous ne pussez porter le mordancestour apres le jugement rendu qe est si<sup>2</sup> solempne qe tout a celui encountre qy ele est rendue fee et dreit.<sup>3</sup>

*Ingham.* il allegge un jugement qe se fit vers nostre auncestour e nous pleignoms de vostre diseisine demene etc.

*Hui.* il se eydont<sup>4</sup> parmi le recoverir qe se fit vers vostre auncestour<sup>5</sup> et amoute au taunt qe si vous fussez einz vous ne defendriez<sup>6</sup> mie vostre tenaunce qil demandereit<sup>7</sup> de plus haut dreit.<sup>8</sup>

*GOLDINGTON.* nous avoms bien vew<sup>9</sup> recoverir par assise et puis cel jugement defete par recoverir de plus haut dreit.

ANON. v. ANON.<sup>10</sup>

Disseisina.

Un B.<sup>11</sup> porta assise<sup>12</sup> de novel disseisine<sup>12</sup> vers C.

*Laufer.* C. nad fet nul tort qar il entra par un S.<sup>13</sup> etc. et furent<sup>14</sup> al assise.

*Bacoun*<sup>15</sup> nous dioms pur B. en<sup>16</sup> evidence<sup>17</sup> del assise<sup>17</sup> qil hors de sa seisine enfeffa S. de mesme les tenementz<sup>18</sup> le feffe C. a ceo qil dit ensuit<sup>18</sup> qe S. lui paiereit vj. marcs pur la terre et S. lui fist un fet par qel fet il se obligea estre tenuz a B. en les vj. marcs a paier a certain jour et sil ne paiast qe bien lust al dit B. dentrer<sup>19</sup> les tenementz et mist avant fet qe ceo tesmoigna et dit qil entra par vertu de ceo fet pur ceo qe les vj. marcs furent ariere et fust seisi taunt qe par C. disseisi.

*Laufer* jugement de la coniceance qe vous avez conu qe<sup>20</sup> B. enfeffa S.<sup>21</sup> en fee si vous sur nostre seisine qe sumes assigne S.<sup>22</sup> peusez entrer par vertue del obligacion S.<sup>22</sup> qil vous fit de la dette etc. par qel fet il ne pout nient enfebler<sup>23</sup> son estat<sup>24</sup> saunz soy demettre etc. ne a vous ne peut nul estat acrestre de lui oster de son fraunktenement par tiel fet etc. mes eiez bref de dette etc.

*SPIGURNEL.* Quant homme engage tenementz il nest mie en volunte qil soit enherite mest est de paier les deners qil ad aprompte et reaver les tenementz en tiel cas sil paie ses deners etc. il peut entrer mes en

<sup>1-3</sup> jugement si sanz mustrer coment puis etc devez al assise etc. *HERVI.* ore vous eidetz car il se eide par le recoverir qe se fist vers vostre ael qi heir vous estes par quoi ascuns genz voient dire qe fee et dreit se vest en la persone cely par my le recoveri issi qe vous ne poez porter le mordancestour apres le jugement rendu qe est si solempne etc. <sup>2</sup> en soy  $\beta$ . <sup>4</sup> eyde  $\beta$ . <sup>5</sup> ayele  $\beta$ . <sup>6</sup> perderes  $\beta$ . <sup>7</sup> demande  $\beta$ . <sup>8</sup> dreit supplied from  $\lambda$ . <sup>9</sup> vewz  $\beta$ . <sup>10</sup> Reported by  $\gamma$ ,  $\delta$ ,  $\epsilon$ . Text from  $\gamma$  collated with  $\delta$  and  $\epsilon$ . <sup>11</sup> A.  $\delta$ , and so throughout. <sup>12-12</sup>  $\delta$  omits. <sup>13</sup> G.  $\epsilon$ . <sup>14</sup> fut  $\delta$ . <sup>15</sup> Wescote  $\delta$ . <sup>16</sup> un  $\delta$ . <sup>17-17</sup>  $\delta$  omits. <sup>18-18</sup> issint  $\delta$ . The text is probably corrupt. <sup>19</sup> de reentrer  $\epsilon$ . <sup>20-21</sup> vous enfeffastes S. de C.  $\delta$ . <sup>21</sup> G.  $\epsilon$ . <sup>22</sup> G.  $\epsilon$ . <sup>23</sup> disafebler  $\delta$ . <sup>23-24</sup>  $\delta$  omits.



before the King against the tenant of these same tenements and recovered and is now in by that judgment, which is founded upon the recovery got against your ancestor whose heir you are. And for this reason some are of opinion that the fee and the right are vested in the person of him who recovered, in virtue of that recovery, so that you cannot bring the mortdancestor after that judgment given, which is of so serious a nature that it deprives him against whom it was given of the fee and right.

*Ingham.* He pleads a judgment which was given against our ancestor, while we are complaining of your own act of disseisin etc.

STAUNTON J. They are relying upon the recovery got against your ancestor, which amounts to saying that even if you were in you could not defend your tenancy against his demand based upon a higher right.

GOLDINGTON J. We have seen recovery got by assize, and such judgment subsequently defeated by a recovery got upon a higher right.

#### ANON. v. ANON.<sup>1</sup>

One B. brought an assize of novel disseisin against C.

Disseisin.

*Laufer.* C. has done no wrong, for he entered by one S. etc. And the assize was awarded.

*Bacon.* On behalf of B. we tell you in support of the assize that out of his seisin he enfeofed S. of these same tenements who, C. says, enfeofed him, upon condition that S. should pay six marks to B. for the land : and S. gave him a deed in which he acknowledged himself bound to B. in the six marks to be paid on a certain day ; and if they were not paid B. was then entitled to enter the tenements ; and he [*Bacon*] tendered a deed in-proof, and said that B. entered by virtue of that deed, because the six marks remained unpaid, and that he was seised until that he was disseised by C.

*Laufer.* Judgment upon your admissions—for you have admitted that B. enfeofed S. in fee—whether you are entitled to enter upon the seisin of us who are the assignees of S. in virtue of S.'s bond which he gave to you for the debt without disseising himself, a deed which could not diminish his estate ; nor by such deed could any estate accrue to you so that you could oust him from his freehold. But you can have a writ of debt etc.

SPIGURNEL J. When a man pledges tenements his intention is not to grant an estate of inheritance, but to give security for the repayment of the money he has borrowed and to redeem the tenements ; and in such case, if he repay the money, he can enter. But in this case

<sup>1</sup> See F.A. *Assize*, 390 ; and *Wilton v. Sturry*, p. 132, below.

it was B.'s intention that cesti cas B. fust en volunte qe S.<sup>1</sup> fust enherite e <sup>2</sup>le enfeffement<sup>2</sup> par qey par nul obligacion qe S.<sup>3</sup> pout fere en sa seisine demene ne pout valer a B. de entrer etc.

<sup>4</sup>*Bacoun* fust blame des seriauntz etc.<sup>4</sup>

#### NOTA.<sup>5</sup>

*Nota* en assise de novel disseisine *Bacoun* fut blame pur ceo que il dit qe le defendant entra par reson de une obligacion qe fut tiel qe un home fut tenuz a un altre en v. marcs a paier a certain jour a quel jour si il ne paiast qe bien lirait al autre de entrer sa terre a quel jour il ne paia point par quay lautre entra par reson del obligacion et le dettor porta lassise et recoveri non obstante le feat qe dona pouer al autre d'entrer pur ceo qe nul obligacion qe home fet durant sa seisine demene ne li oste de son franktenement sil ne fut conisant en court qe porte recorde par quoi il recoversa et alius in misericordia et fut chase a son bref de dette a la comune lay par SPIGURNEL etc.

#### ANON. v. ANON.<sup>6</sup>

<sup>7</sup>Un homme et sa femme<sup>8</sup> porterent bref<sup>9</sup> de novel disseisine vers B.<sup>10</sup> et vindrent a la barre et disoient qil ne voleient pas siwir.

<sup>11</sup>*Pas.* pria le retraxit.

HERVI. vous naverez point qar la femme est coverte de baron et nest pas en cas de estre examine etc.<sup>12</sup>

#### NOTA.<sup>13</sup>

Qe la ou homme et sa femme porteront un assise de novele diseisine et la plainte fut entre le baroun et sa femme disoient qil ne voleient suyre le bref dit fut par la court qe le retraxit ne serreit paas entre kar vivaunt le baroun la femme ne se put paas retrere mes tut est le fet le baroun kar apres la mort soun baroun ele peut porter autre bref etc.

<sup>1</sup> G. ε. <sup>2-2</sup> lenfeff[a] δ. <sup>3</sup> l. ε. <sup>4-4</sup> δ omits. <sup>5</sup> Note from ζ. <sup>6</sup> Reported by β, γ, δ, ζ. Text from γ collated with δ and ζ. <sup>7-8</sup> une feme home et sa feme ζ.

<sup>9</sup> un assise ζ. <sup>10</sup> W. de C. et plusours autres δ; Henri de Cobham et plusurs autres ζ.

<sup>11-12</sup> *Pass.* fetes primes vostre pleint pus ditez ceo qe vous plect et ils fesount la pleint et pus disoient qil ne voleint pas suir. HERVI a *Pas.* vous ne poez my aver le retraxit pur ceo qe la femme nest my nome en bref δ; *Pass.* fetes vostre plainte et pus dites ceo qe vous volez et il fesaint la pleint de ix acres de terre et pus diseint qe il ne voleint mes suer. HERVI a *Pass.* vous ne poez mie aver le retraxit pur ceo qe la feme est nome en le bref etc. questio quare ζ. <sup>13</sup> Note from α, αα, β, γ, δ. Text from α collated with β and compared with the others.

S. should have an estate of inheritance, and he enfeoffed him. Consequently no bond that S. could give, while he remained seised, could entitle B. to enter etc.

*Bacon* was blamed by the serjeants etc.<sup>1</sup>

#### NOTE.

Note that *Bacon* was blamed in an assize of novel disseisin because he said that the defendant entered by reason of a bond which recited that one man was bound to another in five marks to be paid upon a certain day, and that if they were not paid upon that day the other should be entitled to enter upon his land. Upon the day assigned the debtor did not pay, wherefore the other entered in virtue of the bond ; and the debtor brought an assize and recovered, notwithstanding the deed which empowered the other to enter ; and the reason was that no bond which a man gives during his own seisin ousts him from his freehold unless he make recognition thereof in a court of record. Wherefore the debtor recovered, and the other was in mercy and was driven to his writ of debt at the common law. By SPIGURNEL J. etc.

#### ANON. v. ANON.

A man and his wife brought a writ of novel disseisin against B. and they came to the bar and said that they did not wish to proceed with their action.

*Passeley* prayed the *retraxit*.

STAUNTON J. You will not get it, for the woman is *coverte* with a husband and cannot be examined.

#### NOTE.

Note that in a case where a man and his wife brought an assize of novel disseisin, and, upon the case being called, the man and his wife said that they did not want to prosecute their writ, the Court said that a *retraxit* could not issue, for the wife could not withdraw during the husband's life, as the deed is entirely the husband's deed ; and she can have another writ after her husband's death.

Note as to a *retraxit*.

<sup>1</sup> See *Introduction*, p. xxi.



NOTA.<sup>1</sup>

Nota qe si home et sa feme portent bref vers ascun tenant tut vieignent amedeus a la barre e conusent qil ne voleit pas seure le retraxit ne serra pas entre mes un nonseure pur ceo qele nest pas en case de estre examine.

BERNEFELD v. BERNEFELD.<sup>2</sup>I.<sup>3</sup>

Assisa venit recognitura si Willelmus filius Willelmi de Bernefeld Willelmus le Clerk de Charing<sup>4</sup> Iohannes filius eius<sup>5</sup> et Thomas ate Stone<sup>6</sup> iniuste etc. disseisuerunt Henricum filium Roberti de Bernefeld<sup>7</sup> de libero tenemento suo in Charing Peuytone et Schardone<sup>8</sup> post primam etc. et unde queritur quod disseisuerunt eum de medio unius mesagii et lx.<sup>9</sup> acris terre viij. acris parci vij. acris pasture <sup>10</sup>vj. acris alneti et<sup>10</sup> iiij. s. redditus cum pertinenciis et Iohannes filius Willelmi venit et alii non venerunt sed idem Iohannes respondet pro eis tanquam eorum balliuis et pro eis dicit quod ipsi nichil <sup>11</sup>clamant <sup>12</sup>nec aliud habere<sup>13</sup> in predictis tenementis nec aliquam iniuriam seu disseisinam inde fecerunt etc. et de hoc ponunt se super patriam<sup>14</sup> et idem Iohannes respondet pro se ipso ut tenens de predictis tenementis etc. et dicit quod predicta tenementa<sup>15</sup> fuerunt in seisina predicti Roberti de Bernefeld qui inde obiit seisitus etc. post cuius mortem intrauit quidam Willelmus qui ea tenuit tota vita sua et inde obiit seisitus post cuius mortem intrauit <sup>16</sup>in <sup>17</sup>eisdem tenementis<sup>17</sup> predictus Willelmus filius Willelmi de Bernefeld<sup>18</sup> ut filius et eius heres qui postea de seisina sua feoffauit ipsum<sup>19</sup> Iohannem et in seisina posuit etc. unde dicit quod ipse nullam fecit iniuriam seu disseisinam et [de] hoc ponit se super assisam et Henricus similiter<sup>20</sup> ideo capiatur assisa. Iurati dicunt <sup>21</sup>super sacramentum suum<sup>21</sup> quod predicta tenementa sunt de tenura de Gauelkind et fuerunt <sup>22</sup>integre a certo<sup>22</sup> tempore in seisina predicti Roberti de Bernefeld qui desponsauit <sup>23</sup>quamdam Hawisiam<sup>23</sup> de qua procreauit ipsum Henricum <sup>24</sup>et predictum Willelmum fratrem predicto Henrico<sup>24</sup> et dicunt quod predictus Henricus qui nunc queritur vivente predicto Roberto patre suo

<sup>1</sup> Note from *ℓ*.  
parties from E.R.

<sup>2</sup> Reported by *a*, *aa*, *β*, *γ*, *δ*, *ε*, *ζ*, *θ* and *λ*. Names of

<sup>4</sup> Cherring *ε* and E.R.

<sup>3</sup> Text of (I) from *γ* collated with *δ* and *ε* and E.R.

<sup>7</sup> W. *δ*.

<sup>8</sup> Eiartone *ε*.

<sup>9</sup> lxviij *ε*.

<sup>10-10</sup> *δ omits*.

<sup>11-13</sup> habent

nec aliquid habere clamant *δ*.

<sup>12-13</sup> *ε omits*.

<sup>14</sup> assisam *ε*.

<sup>15</sup> *δ adds*

aliquando.

<sup>16-16</sup> quidam W. filius B. de W. *δ*.

<sup>17-17</sup> *from ε*; etc. *γ*.

<sup>19</sup> inde

predictum *δ*.

<sup>20</sup> *δ omits*.

<sup>21-21</sup> etc. *ε*.

<sup>22-22</sup> aliquo *δ*.

<sup>23-23</sup> pre-

dictam *δ*. <sup>24-24</sup> *δ omits*.

## NOTE.

Note that, if a man and his wife bring a writ against a tenant, though both of them come to the bar and declare that they do not desire to proceed further, the *retraxit* shall not be entered, but a non-suit, for the wife is not in a position to be examined.

## BROOMFIELD v. BROOMFIELD.

## I.

The assize came to recognise whether William the son of William of Broomfield, William the clerk of Charing, John his son, <sup>1</sup>Margaret the wife of the same John,<sup>2</sup> and Thomas of Stone unjustly etc. disseised Henry the son of Robert of Broomfield of his freehold in Charing, Pevington and Smarden after the first etc., touching which Henry complains that they disseised him of the half of a messuage and sixty acres of land, of eight acres of park, seven acres of pasture, six acres of alder wood and four shillings of rent, together with the appurtenances. And John the son of William came, and the others did not come; but the same John answers for them as their bailiff, and says on their behalf that they neither claim aught nor have aught in the aforesaid tenements and that neither have they done any wrong or disseisin therein etc.; and of this they put themselves upon the country. And the same John answers for himself as tenant of the aforesaid tenements etc.; and says that the aforesaid tenements were in the seisin of the aforesaid Robert of Broomfield, who died seised thereof. After his death a certain William entered, and he held them all his life and died seised of them. After his death the aforesaid William, the son of William of Broomfield, entered the aforesaid tenements as son and heir, and afterwards out of his seisin enfeofed John himself and put him in seisin etc., and therefore he, John, says that he has done no wrong nor disseisin, and of this he puts himself upon the country. And Henry does likewise. Therefore an assize is to be taken. The jurors say upon their oath that the aforesaid tenements are of Gavelkind tenure and at one time were all in the seisin of the aforesaid Robert of Broomfield, who married a certain Hawisia, of whom he begat Henry himself and the aforesaid William, the aforesaid Henry's brother; and they say that the aforesaid Henry, who now makes complaint, did, during the lifetime of the aforesaid Robert his father, betake himself to parts

<sup>1-2</sup> Supplied from E.R.

transtulit se ad partes transmarinas et quod post mortem predicti Roberti qui inde obiit seisitus de predictis tenementis intrauit in eisdem tenementis predictus Willelmus<sup>1</sup> filius suus<sup>2</sup> et ea tenuit per vj. annos et inde obiit seisitus post cuius mortem predictus W. filius W. tunc etatis dimidii anni intrauit in illis tenementis et ea tenuit per dimidium anni et cum<sup>3</sup> predictus Henricus rediit a partibus transmarinis<sup>4</sup> statim<sup>5</sup> posuit se in tenementis illis clamando medietatem eorumdem ut coheres predicti Willelmi filii Roberti et predicti Iohannes et Margareta et Thomas ipsum Henricum ammouerunt. Et quia<sup>6</sup> compertum est per assisam istam quod predictus Henricus filius Roberti ad quem spectabat ius propartis sue etc. fuit infra etatem tempore quo posuit se in predictis tenementis tamquam coheres etc. et adhuc est infra etatem per quod videtur curie quod predicta seisina predicti Willelmi participis etc. per tempus predictum continuata ut predictum est predicto Henrico preiudicari non debet ratione minoris etatis sue etc. Ideo consideratum est quod predictus Henricus<sup>7</sup> particeps inde seisinam suam<sup>7</sup> per visum recognitorum et dampna sua ad<sup>8</sup> etc. xl. s.<sup>8</sup> recuperet et alii in misericordia.

et <sup>9</sup>Nota qe<sup>9</sup> SPIGURNEL<sup>10</sup> dit <sup>11</sup>en son jugement<sup>11</sup> qe tut eust il este en Engleterre<sup>12</sup> taunt com il est uncore denz age son fet ne lui serroit point preclusif.

## II.<sup>13</sup>

<sup>14</sup>Henri le fitz Robert de Bernefeld porta un assise de novel disseisin vers William le Fitz William de Bernefeld Johan le fitz Clerk et altres etc. touz furent par baillif estre William fitz William qe vous<sup>15</sup> respoint com tenant et dit qe Robert de B.<sup>16</sup> de ceux tenemenz morust<sup>17</sup> seisi en son demene etc.<sup>18</sup> apres q<sup>i</sup> mort un William<sup>19</sup> entra com fitz et heir<sup>20</sup> et morust seisi apres q<sup>y</sup> mort entra W. le fitz W. com fitz et heir<sup>21</sup> et nous aliena et issi sumes nous einz jugement si assise deive estre saunz ceo qe vous ne moustrez title.<sup>22</sup>

<sup>1</sup> Watterus δ. <sup>2</sup> δ omits. <sup>3</sup> dicit quod postea δ, ε. <sup>4</sup> δ, ε add et. <sup>5</sup> δ adds post adventum suum. <sup>6</sup> δ omits. <sup>7-7</sup> recuperet inde seisinam suam tenendam in communi scilicet cum predicto Willelmo particeps suo etc. E.R. <sup>8-8</sup> η omits. <sup>9-9</sup> Md. qe Sire H. ε. <sup>10</sup> Sire H. de S. δ. <sup>11-11</sup> ε omits. <sup>12</sup> la terre δ. <sup>13</sup> Text of (II) from a collated with β, ζ and λ. <sup>14-15</sup> Un H. se pleint estre disseisi de la moite de un mees et de xxx. acres de terre etc. B. ζ. <sup>16</sup> Burnefeld ζ. <sup>17-18</sup> ζ omits. <sup>19</sup> H. ζ. <sup>20-21</sup> from β; a and λ omit. <sup>21-22</sup> qe hors de sa seisine dona mesme ces tenementz a cesti B. et obliga luy et ses heirs a la garantie. H. se abati sur la seisine B. et il ne lui soffrei point jugement si de tel abatement sanz mustrer title de franktenement a nul assise deit avenir, ζ.



beyond the sea ; and that upon the death of the aforesaid Robert who died seised of the aforesaid tenements, the aforesaid William his son entered upon them and held them for six years, and died seised of them ; and that upon his death the aforesaid William, the son of William, being then of the age of six months, entered upon those tenements and held them for half a year ; and that when the aforesaid Henry returned from parts beyond the sea he straightway put himself in those tenements, claiming the half of the same as co-heir with the aforesaid William the son of Robert, and the aforesaid John and Margaret and Thomas ejected this same Henry. And because it was found by that assize that the aforesaid Henry, son of Robert, who had an expectant right to his share etc. was within age when he put himself in the tenements aforesaid as coheir etc., and still is within age ; and because it therefore seems to the Court that the aforesaid seisin of the aforesaid parcener William etc., continuing, as is aforesaid, during the aforesaid time, ought not to prejudice the aforesaid Henry seeing that he is within age etc., the Court gives judgment that the aforesaid parcener Henry 'recover his seisin thereof by view of the recognitors, that is to say, to hold in common with the aforesaid William his parcener<sup>2</sup> ; and recover his damages in the sum of forty shillings ; and that the others be in mercy.

And note that SPIGURNEL J., said in his judgment that though Henry had been in England, yet, as he was within age, his action<sup>3</sup> would not have been conclusive against him.

## II.

Henry the son of Robert of Broomfield brought an assize of novel disseisin against William the son of William of Broomfield, John Fitzclerk and others etc. All appeared by bailiff except William the son of William, <sup>4</sup>who answers you as tenant and says that Robert of B. died seised of these tenements in his own demesne etc., after whose death one William entered as son and heir and died seised ; and after his death William the son of William entered as son and heir and alienated to us,<sup>4</sup> and so we are in. Judgment whether assize ought to be without your proving title.

<sup>1-2</sup> In translating I have supplied from the E.R. the words missing from the text which are clearly needed to make sense. See note <sup>7</sup> on the opposite page.

<sup>3</sup> Rather his want of action ; his

acquiescence in the elder William's seisin of the whole inheritance.

<sup>4-4</sup> There is some confusion here, as William is made to alienate to himself. He could not have been both tenant and alienor.

*Stonore.* <sup>1</sup> bien est verite qe Robert fust seisi auxi com vous avez dit et avoit deux fitz William et Henri qe portent ceste assise Robert morust seisi. Et pur ceo qe les tenemenz sount departables cesti Henri apres sa mort se mist einz clamant estat de parcenerie et seisi fut<sup>2</sup> tauntqe par vous fut disseisi.

Par quei lassise fut agarde\* qe dit qe Robert avoit deus fitz William et Henri et Henri deinz age se mist outre meyr vivaunt Robert soun pere qe puis devia. William entra lentier<sup>3</sup> et prist femme et engendra cestui William qe ore est tenaunt qe nest dil age qe demi an cestui Henri demora la outre mer<sup>4</sup> bien vj. aunz apres la mort soun pere<sup>5</sup> Henri vint en Engleterre et se mist einz freschement apres qil fut venuz tauntqe ceux nomez en le bref le ousteront et prierent eide etc.

SPIG. agardez votz jugements.

SPIG. a un autre jour. Pur ceo qe trove est qe Robert morust seisi etc. ut supra et cestui Henri trova le fitz soun frere seisi qe est soun parcener et se mist einz et seisi fust tauntqe etc. et de ceo qil parlont<sup>6</sup> qe William le fitz William dust avoir aliene navoms mie a engere kar il nest qe dage<sup>7</sup> un demi an et Henri est uncore deinz age par quei tut eut<sup>8</sup> il este en Engleterre il se pout aver mis einz en la manere par quei agarde ceste court qe Henri recovere sa seisine en la manere com il fut disseisi cest a saver en comune ove William soun parcener.

<sup>1-2</sup> H. fut seisi com de franktenement ζ. <sup>3</sup> en le tenemenz β. <sup>4</sup> from β; a omits. <sup>5</sup> λ adds issi qe William son frer vesquy bien vj. aunz apres la mort son pere et seisi fut del entier puis. <sup>6</sup> parlent β. <sup>7</sup> lage de β. <sup>8</sup> ust β.  
\* From this point to the end of the case ζ reads:—par SPIGURNEL pur ceo qil fut denz age.

*Lassise* vint et dit qe un Robert fut seisi de ceuz tenementz et des altrez tenementz qe furent tenez en gavelkind et morust sesi. Cesti H. fut son fiz et fut outre meer son frere William leyne entra en lentere et prist feme et engendra un K. et fut William le pier K. seisi de ceuz tenementz vj. aunz pus morust William sa feme tent la moite en non de dower et lautre moite en noun de norture des effanz qi esteient denz age pus prist la feme baron mesme cesti B. qe ore respond com tenant.

SPIGURNEL de quel age est K. le fiz William qe dust aver le feffement fet a B. qe respond com tenant.

*Lassise* nemie de ij. aunz e pus diseint ceuz del assise qe H. apres la mort William son frere un an vint a lostel et aperceaviant la mort William son pier maintenant se mist en les tenementz et clama sa purpartie et B. luy osta et prioms discretions.

SPIGURNEL donk fut il vij. aunz de la mere apres la mort son pier nemie sachant de sa mort.

*Lassise.* Sire oil.

SPIGURNEL Si nous agardoms disseisine ad quels damages.

*Lassise* a xls.

SPIGURNEL atendez vos jours jeskez a joudi prochein apres la feste de la Nativite de nostre Dame ad quem diem SPIGURNEL pur ceo qe ataint est par cest assise qe le avantdit le fiz R. de Bernefeld a qi apent le droit de sa purpartie fut denz age le temps qe il se mist en ces tenementz auxi com coheir mesme cesti K. et unqore est denz age par quay avise est a la courte qe le avantdit seisine del avantdit W. son parcener par tant de temps continue com avant est dit ne doit a mesme cesti H. estre prejudicial par reson de son noun age par quay agarde la courte qe H. recovere sa seisine et ses damages de xls. et B. en la mercie etc.

*Stonore.* It is true that Robert was seised, as you have said ; and he had two sons, William, and Henry who brings this assize. Robert died seised. And, because the tenements are partible, Henry put himself in after Robert's death, claiming an estate in parcenary, and he was seised until that he was disseised by you.

Thereupon the assize was awarded, and it said that Robert had two sons, William and Henry, and that Henry, while he was within age, betook himself beyond sea during the lifetime of his father Robert, who afterwards died. William entered upon the entirety, and took a wife and begat this William, the present tenant, who is of the age of half a year only. This Henry remained beyond sea for good six years after his father's death. Henry returned to England and straightway upon his return put himself in [and remained seised] until those named in the writ ejected him ; and they prayed aid etc.<sup>1</sup>

SPIGURNEL J. Abide your judgments.

SPIGURNEL J., upon another day. Because it has been found that Robert died seised etc. *as above* and that this Henry found the son of his brother, being his parcener, seised, and put himself in and was seised until etc. this Court gives judgment that Henry recover his seisin after the manner in which he had it when he was disseised, that is to say, in common with William his parcener ; for we need not go into what they say as to an alienation by William the son of William, seeing that he is only half a year old ; and as Henry himself is still within age, William might, even if Henry had been in England, have entered upon the manor [without prejudice to Henry's right to recover].

<sup>1</sup> *i.e.* the assize returned a special verdict, and prayed the Court to state its legal effect.



LEUYS v. MONNER.<sup>1</sup>I.<sup>2</sup>

Disseisina.

Assisa venit recognitura si Robertus Leuys de Estrenewich<sup>3</sup> iunior iniuste etc. disseisiuit Iohannem le Monner de Estgrenewich et Margaretam uxorem eius Adam de Forda<sup>4</sup> et Dionisiam uxorem eius<sup>5</sup> et Isabellam filiam Roberti Leuys de Estgrenewich senioris de libero tenemento suo in Estgrenewich post primam etc. et unde queritur quod disseiziuit eos de j. messagio ij. cotagiis iij. rodīs terre et j. haya continente xxx. pedes in longitudine et xvij. pedes in latitudine cum pertinenciis etc.

Et predictus Robertus venit et dicit quod predictus I. et alii iniuste tulerunt assisam istam versus eum dicit enim quod quidam Robertus Leuys pater suus obiit seiscitus de predictis tenementis in dominico<sup>6</sup> ut de feodo post cuius mortem ipse intrauit in eisdem tenementis ut filius suus et heres et seisinam suam hucusque continuauit absque aliqua iniuria seu disseisina eis inde facienda.

Et Iohannes et alii dicunt quod reuera predictus Robertus pater etc. obiit seiscitus de predictis tenementis etc. post cuius mortem prefate Margareta Dionisia et Isabella fuerunt inde in seisina per descensum de predicto Roberto patre suo etc. ut de libero tenemento suo<sup>7</sup> etc. et quod predictus Robertus nullius heres esse patet quia natus fuit extra sponsalia et hoc petunt quod inquiratur<sup>8</sup> per patriam<sup>8</sup> et Robertus dicit quod natus est infra sponsalia<sup>9</sup> et ideo capiatur assisa.

Iurati dicunt etc. quod predictus Robertus Leuys procreauit de quadam Agnete predictum Robertum Leuys iuniorem per ij. annos tantum ante sponsalia et post eandem Agnetem duxit in uxorem et ex ea procreauit predictas Margaretam Dionisiam et Isabellam et dicunt quod idem Robertus etc. pater etc. obiit seiscitus de predictis tenementis in dominico suo ut de feodo post cuius mortem tam predictus Robertus iunior quam predictae Margareta Dionisia et Isabella intrauerunt in tenementis illis clamando ius hereditatis per descensum de predicto Roberto patre eorum predictis Margareta Dionisia et Isabella tunc infra etatem existentibus et dicunt quod postmodum<sup>10</sup> predictus Robertus iunior<sup>11</sup> assignauit predictae Agneti matri sue medietatem predictorum tenementorum tenendam in dotem postquam assignacionem factam predictae M. D. et I. elongauerunt se a predicto R. fratre suo et morabantur cum predicta Agnete in predictis tenementis assignatis in dotem.

<sup>1</sup> Reported by *a*, *γ*, *δ*, *ε*, *η* and *θ*.  
E.R.

<sup>3</sup> Est Grenewich E.R.

<sup>2</sup> Text of (I) from *γ* collated with *ε* and  
<sup>4</sup> Forde *ε*; Forthho E.R.

and E.R.; etc. *γ*.  
<sup>9</sup> from *ε*; etc. *γ*.

<sup>6</sup> E and E.R. *add* suo.  
<sup>10</sup> from *ε*.

<sup>7</sup> *ε add*s quousque.  
<sup>11</sup> filius Roberti *ε*.

<sup>5</sup> from *ε*

<sup>8-9</sup> from *ε*.

LEWIS *v.* MONNER.

## I.

The assize comes to recognise whether Robert Lewis of East Greenwich the younger unjustly etc. disseised John Monner of East Greenwich and Margaret his wife, Adam of Foord and Dionysia his wife, and Isabel the daughter of Robert Lewis of East Greenwich the elder of their freehold in East Greenwich after the first etc. in respect of which these complain that Robert disseised them of one messuage, two cottages, three roods of land and of a plantation thirty feet in length and eighteen feet in breadth with the appurtenances etc. Disseisin.

And the aforesaid Robert comes and says that the aforesaid John and the others have wrongfully brought this assize against him, for he says that a certain Robert Lewis, his father, died seised of the aforesaid tenements in his own demesne as of fee, and that after his death he himself entered upon the same tenements as his son and heir, and has continued his seisin up to the present time without wronging or disseising the complainants.

And John and the others say that the aforesaid Robert, father etc., did in truth die seised of the aforesaid tenements etc., and that after his death the aforesaid Margaret, Dionysia and Isabel were in seisin thereof by descent from the aforesaid Robert their father etc. as of their freehold; and that the aforesaid Robert can be no one's heir, seeing that he was born out of wedlock; and they pray that this may be inquired of by the country. And Robert says that he was born in wedlock. And so an assize is to come.

The jury say etc. that the aforesaid Robert Lewis begat the aforesaid Robert Lewis the younger of a certain Agnes two years before marriage, and that he afterwards married the same Agnes and begat of her the aforesaid Margaret, Dionysia and Isabel; and they say that the same Robert, father etc., died seised of the aforesaid tenements in his own demesne as of fee; and that after his death the aforesaid Robert the younger and also the aforesaid Margaret, Dionysia and Isabel entered upon the tenements, claiming the right of succession by descent from the aforesaid Robert their father; the aforesaid Margaret, Dionysia and Isabel then being within age. And they say that the aforesaid Robert the younger afterwards assigned to the aforesaid Agnes his mother a moiety of the aforesaid tenements to be held by her by way of dower; and that after the assignment the aforesaid Margaret, Dionysia and Isabel parted themselves from the aforesaid Robert their brother and lived with the aforesaid Agnes in the aforesaid tenements assigned to her by way of dower.

<sup>1</sup>Et quia compertum est per assisam istam quod predictæ Margeria Dionisia et Isabella tunc infra etatem existentes ut predictum est recenter post mortem predicti Roberti patris sui intrauerunt in predictis tenementis ut heredes ipsius Roberti propinquiores et inde fuerunt seiscite et quod predictus Robertus Leuys iunior nichil iuris clamare potuit in predictis tenementis per successionem hereditariam de predicto Roberto patre etc. eo quod idem Robertus Leuys iunior natus fuit extra desponsalia etc. Consideratum est quod predicti Iohannes le Monner et Margeria uxor eius et alii querentes recuperent inde seisinam suam per visum recognitorum. Et dampna sua que taxantur per eosdem ad unam marcam.<sup>2</sup> Et predictus Robertus Leuys iunior in misericordia etc.

Et sciendum quod Recordum et processus mittentur coram Rege per breue etc.<sup>3</sup>

*Cant.* pur Robert sire vous ne poez nul jugement doner pur les pleintiffs qar vous avez trove par assise qe Robert et les pleintifs entrement tous ensemble et peus se aloynèrent hors des tenementz par lour eindegree par qey il apiert<sup>4</sup> qe R. ne les disseisit point.

SPIGURNEL. nous veoms qe homme peut par son countre pled estre disseisor saunz autre chose et nous veoms qe Robert vynt a la barre de plein age et pleda etc. et dit qil entra ceus tenementz apres la mort son piere com soul heir et par taunt countre pleda lestat les pleintifs par qey il est disseisor apiert.

Et hic nota secundum eundem quod countre pled entre privez etc.

## II.<sup>5</sup>

Assise nouel disseisine ou fut allegge countre le tenaunt qil nasquit auant les esposales ou fut dit quod pedis posicio sufficit vero heredi pro seisina.

Treis soers porterunt une assise de nouel disseisine uers Robert Leuys de Estgrene et se pleint estre disseisi de j. mes treis cotages et treis rodes de terre en E. Un Robert respoundi com tenaunt et dit qe a tort porte il cest assise qe un Robert Leuys soun pere fut seisi de ceus tenemenz mis en vewe et morust seisi apres qi mort cesti Robert entra com fiz et heir saunz tort ou disseisine fere.

*Caunt.* nous vous dioms qe com fiz et heir ne poez entrer qe vous nasquites auant les esposales et nous sumes fiz et heir mesme

<sup>1-3</sup> supplied from E.R., m. 60d.  
to the clerks.

<sup>4</sup> ensuyt e.

<sup>2</sup> It is noted that one shilling of this went

<sup>5</sup> Text of (II) from a.



And because it has been found by this assize that the aforesaid Margaret, Dionysia and Isabel, being then within age as is aforesaid, entered upon the aforesaid tenements shortly after the death of the aforesaid Robert their father as the next heirs of the said Robert and were seised thereof, and that the aforesaid Robert Lewis the younger could claim no right in the aforesaid tenements by hereditary succession from the aforesaid Robert father etc., the said Robert Lewis the younger having been born out of wedlock etc. it is adjudged that the aforesaid John Monner and Margery his wife and the other complainants recover their seisin thereof by view of recognitors, also their damages, which are assessed by the same at one mark. And the aforesaid Robert Lewis the younger is in mercy etc.

And note that the record and process are to be sent to the King in obedience to a letter etc.

*Cambridge*, on behalf of Robert. Sir, you cannot give judgment for the plaintiffs, for the assize has found that Robert and the plaintiffs entered all together and that afterwards [the sisters] withdrew themselves of their own free will from the tenements; and consequently it would seem that Robert did not disseise them.

SPIGURNEL J. We see that a man may become a disseisor by counterpleading only; and we see that Robert, being of full age, came to the bar and pleaded etc., and he says that he entered these tenements after his father's death as his sole heir; and, in saying that, he counterpleaded to the estate of the plaintiffs' estate and so becomes a disseisor.

And note this, that according to the same [Judge] counterpleading between parties etc.

## II.

Assize of novel disseisin where it was alleged against the tenant that he was born out of wedlock; and it was said that possession of a single foot of land was sufficient to put the real heir into seisin.

Three sisters brought an assize of novel disseisin against Robert Lewis of East Greenwich and complained that they had been disseised of one messuage, three cottages and three roods of land in East Greenwich. One Robert answered as tenant, and said that they brought this assize wrongfully, for that one Robert Lewis his father was seised of the tenements put in view and died seised; and after his death this Robert entered as son and heir without wronging or disseising the complainants.

*Cambridge*. We tell you that you could not enter as son and heir for you were born out of wedlock, and we are daughters and heir of that

celui Robert qe morust seisi apres qi mort nous entrames com filles et heir et seisi fumes taunt qe vous nous disseisi prest etc.

Lassise vint et dit qe Robert le pere morust seisi apres qi mort entrerent cestui Robert etc. et les iij. filles demorent en comune la einz tauntqe cesti Robert assigna en dowere la moite des tenemenz dount le baroun morust seisi et les filies alerent oue lour mere et cesti Robert touz iours fut einz apres la mort soun pere mes il nasquit deus aunz deuaunt les esposailles et prioms votz aides.

SPIGURNEL. reuindront les iij. soers vnqes puis qeles alerent oue lour mere a reentrer les tenemenz.

Lassise dit qe noun.

SPIGURNEL. nepurquaunt quaunt il furent oue Robert assez furent il seisiz quia pedis posicio sufficit vero heredi et la possession Robert qe ne peut com heir entrer ne fut forsque un abbatement et par taunt com il yad ore countreplede lassise assez est il disseisour.

SPIGURNEL. de quel age sount les soers ore.

*Jur.* de xx. aunz.

SPIGURNEL. clamerent il point de dreit en les tenemenz quant il furent de tiel age.

*Jur.* sire oyl.

SPIGURNEL. agardez voz jugemenz etc. Et si sauez bien quel jugement vous auerez et pur ceo fetes gree a votz soers.

### III.<sup>1</sup>

Johan le Mouner et Isabelle sa feme et Juliane soer meme ceti Isabelle porterent une assise de novel disseisine vers Robert de Lewes etc.

*Lauf.* a tort portent il cet assise qar un Robert morust seisi de tenemenz mis en vewe en son demene com de fee apres qi mort ceti Robert entra com fiz<sup>2</sup> et heir sanz tort etc.

*Caunt.* nous conisoms bien qe Robert morust seisi en son demene com de fee apres qi mort Isabelle et Juliane entrerent com filles et un heir et vous dioms qe vous com fiz et heir Robert ne poet entrer qar vous nasquites hors de esposailles.

SPIG. en ceo cas le pleintif ne serra pas chace a dire qe le tenant est pleinement bastard en qel cas il sereit mande a la court cretienne pur ceo qil demandent de lour seisine demene et la ou plusours entrent en clamant dreit<sup>3</sup> de succession la seisine est a celi qe plus de dreit<sup>4</sup> ad pur quei viegne lassise.

<sup>1</sup> Text of (III) from  $\eta$  collated with  $\theta$ .

<sup>2</sup> fuis  $\theta$ .

<sup>3</sup>  $\theta$  adds per title.

<sup>4</sup>  $\theta$  adds en.

same Robert who died seised ; and after his death we entered as daughters and heir, and were seised until that you disseised us. Ready etc.

The assize came and said that Robert the father died seised, and that upon his death this same Robert etc. and the three daughters entered and lived there together until Robert assigned a moiety of the tenements of which the husband died seised by way of dower, and that then the daughters went away with their mother ; and [they said] that this same Robert was always in possession after his father's death, but he was born two years before wedlock ; and we pray your aid.<sup>1</sup>

SPIGURNEL J. Did the three sisters ever return and re-enter the tenements after they went away with their mother ?

The assize said that they did not.

SPIGURNEL J. Notwithstanding that, they were, when they were with Robert, sufficiently seised, for the possession of a single foot suffices for a true heir ; and the possession of Robert, who could not enter as heir, was naught better than an abatement ; and, inasmuch as he has now counterpleaded to the assize, he is a disseisor.<sup>2</sup>

SPIGURNEL J. How old are the sisters now ?

*The Jury.* Twenty years.

SPIGURNEL J. Being of such an age, did they not claim a right in the tenements ?

*Jury.* Yes, sir.

SPIGURNEL J. Await your judgments etc. And, as you know very well what judgment you will have, come to terms with your sisters.

### III.

John Monner and Isabel his wife and Juliana the sister of this same Isabel brought an assize of novel disseisin against Robert of Lewes etc.

*Laufer.* They bring this assize wrongfully, for one Robert died seised of the tenements put in view in his own demesne as of fee ; and after his death this Robert entered as son and heir without wrong etc.

*Cambridge.* We admit that Robert died seised in his own demesne as of fee, and that after his death Isabel and Juliana entered as daughters and a single heir ; and we tell you that you could not enter as Robert's son and heir, for you were born out of wedlock.

SPIGURNEL J. In the circumstances the plaintiff will not be compelled to say explicitly that the tenant is a bastard, for in that case the question would have to be remitted to Court Christian. Since they claim of their own seisin, and we have several entering and claiming the right of succession, the seisin belongs to the one who has the greatest right ; and therefore let the assize come.

<sup>1</sup> The assize finds the facts, and asks the Court to interpret them.

<sup>2</sup> See *Introduction*, p. xxii.



Qi vint et dit qe Robert le pere engendra ceti Robert ij. ans avant lez esposailles entre ly et sa feme et pus <sup>1</sup>lesposa et <sup>2</sup>engendra Isabelle et Juliane apres la mort Robert entrerent Robert<sup>3</sup> Isabelle et Juliane en clamant heritage Robert dowra sa mere par usage etc. la mere ala a son dower et lez filles <sup>4</sup>ly suerent<sup>5</sup> et Robert tot tens pus se ad tenuz einz <sup>6</sup>et prierent<sup>7</sup> lour descressions.

SPRG. troue est par<sup>8</sup> assise qe Robert vers qi cet assise est porte nasquit hors de esposailles et qe meme ceti Robert et Isabelle et Juliane entrerent en comune apres la mort lour pere et la ou plusours entrent lassise est<sup>9</sup> a cely qi est vray heir et ceo sunt<sup>10</sup> Isabelle et Juliane mudlers<sup>11</sup> etc. et tot seit ceo troue qe il furent pas <sup>12</sup>delites nepurqant<sup>13</sup> il est<sup>14</sup> disseisour par son contrepleder pur quei agarde cete court qil recouerent seisine par vewe etc.

Et Nota qe le tenant en ceo cas<sup>15</sup> pout auer meuth<sup>16</sup> plede de auer dit qil fut prest de oier la reconisance <sup>17</sup>qar en cel cas lassise ne serra pas charge de nestre hors de esposailles.<sup>18</sup>

IV.<sup>19</sup>

Un A. B. et C. filles un R. porterent un assise de nouel disseisine vers etc. et mistrent en vewe et en pleint un mees et iij. cotages et iij. verges de terre oue les appurtenances en G. le bref fut porte vers un R. qi respondit com tenant qi dit qe a tort port il ceste assise qar il dit qe R. de ceux tenemenz morust seisi apres qi mort il entra com fitz et heir saunz tort faire.

*Cant.* sire nous conissons bien qe R. morust seisi apres qi mort entra A. B. et C. com filles et un heire et seisi furent ci la qe R. a tort et sanz jugement les disseisit et quant al tittle qil se fist qil entra com fitz R. ceo ne put il dire qar il nasquist deuant les esposailles prest etc.

Lassise vient et dit qe R. de les tenemenz morust seisi apres qi mort R. qore respond com tenant entra et A. B. et C. entrerent et pus R. dowra sa miere de partie des tenemenz dount son pere morust seisi et quant ele fut dowe les filles alerent oue lour mere et demorerent oue ly et disoient plus qe R. nasquit auant les esposailles.

<sup>1-2</sup> les esposailles ζ.      <sup>3</sup> θ adds le fuis.      <sup>4-5</sup> la sewyrent θ.      <sup>6-7</sup> per θ.  
<sup>8</sup> θ adds ceste.      <sup>9</sup> θ adds dit.      <sup>10</sup> nount θ.      <sup>11</sup> moilleres θ.  
<sup>12-13</sup> debate par Robert iademains θ.      <sup>14</sup> from θ; η has nest pas.      <sup>15</sup> plee θ.  
<sup>16</sup> meus θ.      <sup>17-18</sup> de lassise qe adunqs nust pas lassise este charge del nestre hors de esposailles θ.      <sup>19</sup> Text of (IV) from δ.

The assize came and said that Robert the father begat this Robert two years before the marriage between himself and his wife whom he afterwards married and begat Isabel and Juliana. After Robert's death, Robert, Isabel and Juliana entered, claiming the right of inheritance. Robert endowed his mother according to custom etc. The mother withdrew to her dower land, and the daughters followed her, and Robert has continued himself in possession ever since ; and they<sup>1</sup> prayed the Court's advice.

SPIGURNEL J. It is found by assize that Robert, against whom this assize is brought, was born out of wedlock, and that this same Robert and Isabel and Juliana entered in common upon the death of their father ; and in a case where several enter it is for the assize to determine the true heir, and that heir is Isabel and Juliana, legitimate etc. ; and though it has been found that they were not ejected by Robert, nevertheless Robert has become a disseisor by his counterplea. Therefore this Court gives judgment that they recover their seisin by view etc.

And you are to note that in these circumstances it would have been more to the advantage of the tenant if in pleading he had said that he was ready to hear the recognition ; for in that case the assize would not have been charged upon the question of his being born out of wedlock.

#### IV.

A., B. and C., the daughters of one R., brought an assize of novel disseisin against etc., and put in view and in their plaint a messuage and three cottages and three virgates of land with the appurtenances in G. The writ was brought against one R., who answered as tenant, and said that the complainants brought this assize wrongfully against him, for he said that R. died seised of these tenements, and that upon R.'s death he entered upon them as his son and heir without doing wrong etc.

*Cambridge.* Sir, we quite admit that R. died seised ; and upon his death A., B. and C. entered as daughters and one heir and were seised until that R. wrongfully and without any judgment given disseised them ; and as to the title which he sets up, that he entered as R.'s son, he cannot allege that, for he was born before wedlock. Ready etc.

The assize comes and says that R. died seised of the tenements, and that upon his death R., who now answers as tenant, and A., B. and C. entered, and that R. subsequently dowered his mother with part of the tenements of which his father died seised ; and that when the mother was dowered the daughters went away with her and dwelt with her ; and it said further that R. was born before wedlock.

<sup>1</sup> i.e. the assize.

SPIGURNEL. quant les filles entrerent clamerent il nul droit entre eux en les tenemenz.

*Lassise.* sire oyl.

Pedis possessio sufficit in isto titulo et dit lassise qe R. gore est tenant ad este seisi xv. aunz.

SPIGURNEL. Si nous agardoms disseisine a ceux damages etc.

#### NOTA.<sup>1</sup>

Nota : assise de novele disseisine qe nest pas trove disseisour par assise serra disseisour cas ou il contreplede le plentif.

En assise de novele deseisine vers plusours dount un respondit<sup>2</sup> com tenant e dit qe atort porte il ceste assise etc. e lassise veigne e die qe celi qe repondit<sup>3</sup> com tenant nest pas deseisour<sup>4</sup> mes les autres etc. umqore sera il tenu pur deseisour<sup>5</sup> pur ceo qe il contre pleda le pleintif etc. mes<sup>6</sup> sil respondi<sup>7</sup> com tenant e die qe il nad nul tort fet etc. e de ceo prest de oyer la reconisance etc. trove seit par assise qe nient diseisour il ne serra pas tenu pour diseisour par SPIGURNEL.<sup>8</sup>

#### HEYMES v. HORNE.<sup>9</sup>

##### Note from the Eyre Roll.

The issue for the assize was :—Si Willelmus filius Willelmi de Horne et Elena uxor eius Iohannes filius Willelmi de Horne Stephanus de Fresingeye Henricus atte Lekede Willelmus Peres Willelmus Casteleyn et Thomas frater eius et Iohannes Walter iniuste etc. disseisiuerunt Iohannem Heymes de Fresingheye de libero tenemento suo in Tenterdene post primam etc.

William the son of William and Elena his wife alone appear. William answers on behalf of the absentees "tanquam eorum Balliuis etc."

His plea on their behalf was :—quod ipsi nichil habent in predictis tenementis etc. nec aliquam iniuriam seu disseisinam inde fecerunt etc. et de hoc ponunt se super assisam etc.

The plea of William and Elena on their own behalf as the tenants was :—quod tenementa posita in visu non continent in se nisi unum messuagium et quatuor acras et tres rodas<sup>10</sup> terre tantum et quod assisa non debet inde fieri etc. Quia dicunt quod tenementa illa simul cum aliis tenementis dudum fuerunt in seisina cuiusdam Hamonis de Fresingheye ut ius ipsius Hamonis qui

<sup>1</sup> Note from *a*, *aa*, *β* and *λ*. Text from *β* collated with the others. Head note from *aa*. The note in *β* is :—Nota en assise de novele deseisine celi qe nest pas deseisour contre plede lassise il sera auge diseisour.

<sup>2</sup> respount *a*. <sup>3</sup> respondi *a*. <sup>4-5</sup> *a* omits. <sup>6-7</sup> respount *a*. <sup>8</sup> *a* add etc. <sup>9</sup> Reported by *a*, *γ*, *δ*, *ε*, *ζ*. Text from *γ* collated with the others. Head note from *a*. Names of the parties from E.R. <sup>10</sup> The plaintiff alleged in his writ that he had been disseised of five acres.



SPIGURNEL J. When the daughters entered did they claim that they had any right in the tenements ?

*The Assize.* Yes, sir.

The possession of a foot of ground is sufficient in the circumstances ; and the assize said that R., the present tenant, had been seised for fifteen years.

SPIGURNEL J. If we adjudge it a disseisin, what are the damages ?

#### NOTE.

Note that one who is found by assize of novel disseisin to be no disseisor may become one by counterpleading to the plaintiff.

An assize of novel disseisin was brought against several defendants, of whom one answered as tenant and said that the plaintiff wrongfully brought the assize etc. The assize comes and says that he that answers as tenant is no disseisor, but that the others etc. yet the former was ruled to be a disseisor because he counterpleaded to the plaintiff etc. If, when answering as tenant, he had said that he had done no wrong etc., and as to that was ready to hear the recognition of the assize, and the assize had found that he was no disseisor, he would not have been ruled to be one. By SPIGURNEL J.

#### HEYMES *v.* HORNE.

##### Note from the Eyre Roll—*continued.*

habuit duas uxores scilicet quasdam Mabillam et Margeriam. et de predicta Mabilla procreavit ipse predictum Iohannem qui nunc queritur etc. et de predicta Margeria procreavit quemdam Robertum fratrem Elene. Et dicunt quod post mortem predicti Hamonis qui de predictis tenementis obiit seisitus in dominico suo ut de feodo etc. successerunt in eisdem tenementis predicti Iohannes et Robertus ut filii eius et heredes etc. Ita quod tota hereditas etc. partita fuit inter ipsos Iohannem et Robertum et quod tenementa nunc posita in visu etc. assignata fuerunt in proparte ipsius Roberti etc. qui inde obiit seisitus etc. cui successit in eisdem quidam Hamo ut filius eius et heres etc. qui inde obiit seisitus etc. post cuius mortem quia obiit sine herede de se etc. resorciebatur ius etc. predictae Elene ut amite et heredi sorori predicti Roberti patris predicti Hamonis etc. de sanguine integro etc. unde petit iudicium desicut idem Iohannes est de alio ventre et non de sanguine integro ipsum Roberti etc. de proparte ipsius Elene in hac parte assisa fieri debeat etc.

The replication of John Heymes, after admitting that “predicta tenementa simul cum aliis tenementis fuerunt in seisinâ predicti Hamonis de Fresingheye et quod eadem tenementa partita fuerunt inter predictum Robertum et ipsum Iohannem” was :—quod tenementa ista in visu posita et

## Note from the Eyre Roll—continued.

unde queritur etc. assignata fuerunt eidem Iohanni in partem etc. et idem Iohannes inde fuit in seisinâ ut de libero tenemento suo per assignacionem predictam quousque predicti Willelmus et alii in breui nominati ipsum inde iniuste disseisuerunt. Et hoc petit quod inquiretur per assisam.

Upon this replication issue was joined.

The finding of the assize was :—quod predicta tenementa que predictus

Assise nouel disseisine ou femme tenaunte dil enter saunk et de la secunde femme retynt countre le heir male dautre ventre saver de la primere femme.

Disseisina.

Jon Hoymes<sup>1</sup> porta assise de novel disseisine vers une Eleyne et autres et <sup>2</sup>mist<sup>3</sup> etc.<sup>4</sup> v. acres de terre etc.<sup>5</sup>

*Pass.* Tous<sup>6</sup> forpris<sup>7</sup> Eleyne vous dient qil <sup>8</sup>nount rien etc. Eleyne respond com tenant etc. et dit qe ceus tenementz et autres furent en la seisine un Hamond qi avoit ij. femmes dount de la primer il engendra cesti Jon qi porte ceste assise et del a secunde <sup>9</sup>femme il engendra<sup>9</sup> un Robert et ceste Eleyne et<sup>10</sup> apres la mort Hamond Jon et Robert entrerent <sup>11</sup>ceus tenementz<sup>11</sup> com fitz et heirs Hamond et fesoient la purpartie entre eux issint qe les<sup>12</sup> v. acres demandez<sup>13</sup> furent assignez a Robert <sup>14</sup>en sa purpartie<sup>14</sup> et autres v. acres<sup>15</sup> a Jon <sup>16</sup>qi ore se plaint dount il est ore seisi<sup>17</sup> R. morust seisi de les<sup>18</sup> v. acres <sup>19</sup>ore demandez<sup>19</sup> Apres qi mort entra un Hamond com fitz et heir le quel morust seisi<sup>20</sup> saunz heir de son corps par quei ceus tenementz resortirent a cesti<sup>21</sup> Eleyne com a aunte<sup>22</sup> del entier saunk issint entra ele. Jugement si Jon qi est dautre ventre<sup>23</sup> ne moustre title coment fraunk tenement lui soit acru <sup>24</sup>si assise<sup>25</sup> deyve estre.<sup>26</sup>

*Ass.*<sup>27</sup> les tenementz mis en vewe furent assignez a mesme cesti Jon<sup>28</sup> en sa purpartie<sup>29</sup> et issint fust il seisi taunt qe par vous disseisi.<sup>30</sup>

Lassise <sup>31</sup>vynt et<sup>31</sup> dit qe ceus<sup>32</sup> tenementz furent assignez <sup>33</sup>a la purpartie Robert<sup>34</sup> apres qi mort entra<sup>35</sup> Hamond com <sup>36</sup>fitz et<sup>37</sup> heir et<sup>38</sup>

<sup>1</sup> Hemes a ; de Heims ζ. <sup>2-4</sup> se plaint estre disseisi de soun fraunk tenement etc. saver de a. <sup>3</sup> δ, ζ add en sa pleinte. <sup>5</sup> a omits. <sup>6</sup> a omits. <sup>7</sup> e cher (sic) ζ. <sup>8-10</sup> rien ne unt etc. Eleyne vous dit qe ceus tenementz furent en la seisine un Hamond le quel avoit deus femmes dount de la primere femme issi cesti Johan qe porte cest assise. Et de la secunde femme un Robert et ceste Eleyne issi qe a. <sup>9-9</sup> from ε. <sup>11-11</sup> a omits. <sup>12</sup> ceux a. <sup>13</sup> qe ore sunt demaundez a ; ε omits. <sup>14-14</sup> a omits. <sup>15</sup> a adds furent assignez en la purpartie. <sup>16-17</sup> les quels il entent ceo jour ζ. <sup>17</sup> δ adds dount apres ; a adds et. <sup>18</sup> ceux a. <sup>19-19</sup> come de sa purpartie a. <sup>20</sup> ζ adds de mesme ces tenementz. <sup>21</sup> une a. <sup>22</sup> ζ adds et heir. <sup>23</sup> a adds qe. <sup>24-26</sup> deïue al assise atteindre a. <sup>25</sup> ε adds i. <sup>27</sup> δ, ε, ζ add Nous vous dioms qe. <sup>28</sup> a adds qe ore se plaint. <sup>29-30</sup> tauntqe Eleine lui disseisi a. <sup>30</sup> ζ adds et prioms lassise. <sup>31-31</sup> a omits. <sup>32</sup> les a. <sup>33-31</sup> a Robert en sa purpartie a. <sup>34</sup> ζ adds le quel Robert morust seisi. <sup>35</sup> a adds un. <sup>36-37</sup> ζ omits. <sup>38-38</sup> fiz. etc. Le quel Hamoun,

**Note from the Eyre Roll—continued.**

Iohannes Heymes posuit in visu suo et de quibus queritur se disseisiri assignata fuerint predicto Roberto in partem suam et non predicto Iohanni unde dicunt quod predicti Willelmus et alii non disseisiuerunt predictum Iohannem sicut queritur.

The judgment was :—quod predicti Willelmus et alii inde eant sine die et predictus Iohannes nichil capiat per assisam istam et Iohannes Heymes in misericordia etc.<sup>1</sup>

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Assize of novel disseisin where the daughter of the second wife, being of the whole blood, maintained her tenancy against the heir male of the first wife.

John Heymes brought an assize of novel disseisin against one Ellen and others and laid etc. five acres of land etc. Disseisin.

*Passeley.* All except Ellen tell you that they have naught etc. Ellen answers as tenant etc. and says that these tenements and others were in the seisin of one Hamond who had two wives, of the former of whom he begat this John who brings this assize, and of the latter he begat one Robert and this Ellen ; and that, upon Hamond's death, John and Robert entered these tenements as Hamond's sons and heirs and made apportionment between themselves to the effect that the five acres now demanded were assigned to Robert as his share, and other five acres were assigned to John the present demandant, of which he is now seised. Robert died seised of the five acres now demanded. Upon Robert's death one Hamond entered as son and heir, and he died seised without heir of his body. These tenements consequently resorted to this Ellen as aunt of the whole blood, so that she entered. Judgment whether John, who is born of another wife, must not show by what title he claims a freehold before assize be awarded.

*Assheley.* The tenements put in view were assigned to this same John as his share, and he was seised of them until that he was disseised by you.

The assize came and said that those tenements were assigned to Robert as his share, and that Hamond entered upon Robert's death

<sup>1</sup> m. 19d.



morust<sup>1</sup> saunz heir <sup>2</sup>de son corps<sup>2</sup> ut supra et<sup>3</sup> pur ceo qe plus procheine<sup>4</sup> est Eleyne a Hamond qest sa aunte del entier saunk qe nest Jon <sup>5</sup>qi est<sup>5</sup> dautre ventre <sup>6</sup>ideo etc.<sup>6</sup> qe Jon <sup>7</sup>ne preigne<sup>7</sup> rien <sup>8</sup>etc. par son bref.<sup>9</sup>

BURNE v. BURTONE.<sup>10</sup>I.<sup>11</sup>

Assise nouel disseisine de la graunt porte dil mansioun dil Erceuesche de Cauntibirs quel Ercheuesche fut en la mein le Roy.

<sup>12</sup>Jon de B.<sup>13</sup> porte assise de novel disseisine vers <sup>14</sup>Richard de C.<sup>15</sup> et se pleint estre disseisi<sup>16</sup> de son fraunktenement en Caunterbirs<sup>17</sup> et mist en vewe et en plainte la garde de la graunt porte del mansioun lercevesqe de Caunterbirs <sup>18</sup>en Caunterbirs.<sup>18</sup>

*Pas.*<sup>19</sup> la ou vous ditez la garde <sup>20</sup>de la grante porte<sup>20</sup> del mansioun lercevesqe<sup>21</sup> il <sup>22</sup>ni ad<sup>23</sup> nul ercevesqe <sup>24</sup>mes dusez aver dit<sup>25</sup> etc. la garde etc. <sup>26</sup>del erceveschee etc. Jugement de la plainte <sup>27</sup>mes<sup>28</sup> la plainte<sup>29</sup> fust agarde bon.<sup>30</sup>

*Pas.* Sire <sup>31</sup>nous vous dioms qe<sup>31</sup> le erceveschee et la porte qil bie recoverir<sup>32</sup> sount<sup>33</sup> en la meyn le roi par reson de vacatioun et nentendoms mie qe vous voilez a ceste assise aler saunz <sup>34</sup>conceil le roi.<sup>34</sup>

<sup>35</sup>*Stonore* tenant et disseizor <sup>36</sup>Lassise.<sup>37</sup>

HERVI<sup>38</sup> mes<sup>39</sup> il vous pled<sup>40</sup> fort<sup>41</sup> qar vous biez recoverir fraunktenement de chose<sup>42</sup> en la mayn le roi et vous navez nient<sup>43</sup> fet le roy partie<sup>44</sup> et nous<sup>45</sup> veoms<sup>46</sup> qe le profit<sup>47</sup> qe vous biez aver par reson de la grade si chesera<sup>48</sup> en charge de<sup>49</sup> roi pur son temps et <sup>50</sup>del ercevesqe qaunt il<sup>51</sup> serra et resoun<sup>52</sup> ne veut mie qil soit<sup>53</sup> chargez

<sup>1</sup> *δ* adds seisi. <sup>2-2</sup> *ζ* omits. <sup>3</sup> *ε* interlines SPIGURNEL; *ζ* adds SPIGURNEL.  
<sup>4</sup> *a* adds heir. <sup>5-5</sup> *a* omits. <sup>6-6</sup> Agarde fut *a*; fut agarde par la Court *δ*; agarde la curt *ε*; par quay agard la Courte *ζ*. <sup>7-7</sup> from *ε*; ne preist *a*. <sup>8-9</sup> *δ* omits; sed etc. *ε*. <sup>9</sup> *a* adds set in misericordia; *ζ* adds seit in misericordia. <sup>10</sup> Reported by *a*, *γ*, *δ*, *ε*, *ζ*, *η*, *θ*. F.A. *Assise*, 385. <sup>11</sup> Text of (I) from *γ* collated with *a*, *δ*, *ε*, *ζ*. Names of parties and head note from *a*. <sup>12-13</sup> Johan de Burne *a*. <sup>14-15</sup> Henri de Burtone *a*. <sup>15-16</sup> *ζ* omits. <sup>16-17</sup> *a* omits. <sup>18-18</sup> *δ* omits. <sup>19</sup> *a*, *δ*, *ε*, *ζ* add Jugement de ceste plainte qe. <sup>20-20</sup> from *ε*; etc. *γ*. <sup>21</sup> *δ* adds de C.; *ζ* adds de Cant. en Cant. <sup>22-23</sup> nal *a*. <sup>24-25</sup> from *ε*; etc. *a*, *γ*. <sup>26-30</sup> jugement kar il duist dire en cest caas la garde de la graunte porte dil Erceuesche. Et fut ouste pur ceo qil dit melz qe lercevesqe ne peut mie auer porte *a*. <sup>27-29</sup> qar la dusez vous aver dit la gard etc. del ercevesche etc. Hoc non obstante le bref *ζ*. <sup>28</sup> Sed non obstante hoc *ε*. <sup>31-31</sup> from *ε*. <sup>32</sup> *a*, *δ*, *ε*, *ζ* add cest fraunktenementz. <sup>33</sup> si est *a*. <sup>34-34</sup> conseiller au Roi *a*; conseiller oue le Roi *δ*, *ζ*. <sup>35-37</sup> *δ* omits. <sup>36</sup> *a* adds et prioms. <sup>38</sup> STANTON *δ*. <sup>39</sup> *a* omits. <sup>40</sup> *a* adds plus. <sup>41</sup> plus haut *ζ*. <sup>42</sup> ceo qest *a*. <sup>43</sup> mie *a*. <sup>44</sup> *a* adds a vous. <sup>45</sup> *a* adds ne. <sup>46</sup> *a* adds dil heure. <sup>47</sup> profist *a*. <sup>48</sup> cherreit *a*; cherra *δ*, *ε*; escherra *ζ*. <sup>49</sup> du *a*. <sup>50-52</sup> al Erceuesqe il serra et ley *a*. <sup>51</sup> *ε* adds i. <sup>53</sup> soient *a*.

as his son and heir and died without heir of his body *as above*; and because Ellen is nearer to Hamond, being his aunt by the whole blood, than is John, who was born of another mother, it is therefore adjudged that John take naught by his writ.

BURN *v.* BURTON.

## I.

Assize of novel disseisin of the great gate of the Archbishop of Canterbury's palace, the Archbishopric being then in the King's hand.

John of B. brings an assize of novel disseisin against Richard of C. and complained of being disseised of his freehold in Canterbury, and he laid in view and in his plaint the custody of the great door of the Archbishop of Canterbury's palace in Canterbury.

*Passeley.* You have spoken of the custody of the great door of the palace of the Archbishop, and there is no Archbishop. You ought to have said the custody etc. of the archbishopric etc. Judgment of the plaint. *But the plaint was ruled to be good.*

*Passeley.* Sir, we tell you that the archbishopric and the door he is seeking to recover are in the hand of the King by reason of the vacancy of the see, and we submit that you cannot proceed to this assize without consulting the King.

*Stonore.* There is a tenant and a disseisor [and we pray] the assize.

STAUNTON J. But he makes a strong point against you, for you are seeking to recover a freehold of something that is in the King's hand and you have not made the King privy; and we note that the emoluments which you are seeking to obtain through the custodianship are in the King's disposition during his time, and in the Archbishop's when he shall be appointed, and it is only reasonable that the King should not be willing to be bound without being privy, for we note

<sup>1</sup>saunz estre partie<sup>2</sup> qar nous veoms<sup>3</sup> qe si vous volez recoverir comune de pasture par assise il covent nomer le seigneur de soil en vostre bref. Item<sup>4</sup> nous veoms<sup>5</sup> qe lercevesqe peut <sup>6</sup>venir et dire qe celi qi porta cest bref a <sup>7</sup>relesse e<sup>7</sup> qiteclame etc. par qey il <sup>8</sup>est meste<sup>8</sup> qil soit partie.<sup>9</sup>

*Stonore*<sup>10</sup> certes sire noun pout en nule manere qaunt jeo <sup>11</sup>ay <sup>12</sup>autres tenementz<sup>13</sup> et hoc nota mes ore avoms nous tenant et disseisor <sup>14</sup>par quei etc.<sup>15</sup> et dautre part <sup>16</sup>sire <sup>17</sup>jeo di qe jeo enteng certeynement qe<sup>18</sup> si jeo<sup>19</sup> eye la gard dune foreste etc. et <sup>20</sup>autre qe le seigneur me ouste<sup>20</sup> jeo averay bien lassise vers ly<sup>21</sup> saunz nomer le seigneur <sup>22</sup>sic hic.<sup>22</sup>

<sup>23</sup>HERVI doit le roi aver porter countre sa volunte quasi diceret non.

Et furent les paroles de la chartre <sup>24</sup>un ercevesqe<sup>24</sup> tieles par quele la garde etc. fust graunte <sup>25</sup>al auncestre<sup>25</sup> le pleintif. Concessi etiam dicto J. portoriam curie mee Cantuarie. Sur ceste parole fust la pleinte fete mes primes fust la pleinte fete de la garde etc. de la court lercevesqe etc. et peus de la garde etc. de la porte del paleys etc. mes peus se acorderent a ceste pleint ut supra per concilium.

SPIGURNEL<sup>26</sup> qar il<sup>27</sup> dit qil avoit<sup>28</sup> vew un precipe quod reddat mansionem<sup>29</sup> meyntenu.

*Ingham*.<sup>30</sup> le statut ne fust fet en tiel cas mes dabregger deleys <sup>31</sup>qe <sup>32</sup>doune assise<sup>33</sup> la ou <sup>34</sup>avant ieust<sup>34</sup> le quod permittat<sup>35</sup> mes sil fust al quod permittat il covendroit porter bref<sup>36</sup> vers le seigneur de soil par qey il covent qe le seigneur de la porte soit nomee etc.<sup>37</sup>

<sup>1-2</sup> estre ceo δ. <sup>2-3</sup> a omits. <sup>3-5</sup> δ omits. <sup>4</sup> estre ceo a, ε, ζ. <sup>6-9</sup> aver reles de celui qe cleime et issi barrer lassise par quei il mester qil soit nomee a. <sup>7-7</sup> from ε. <sup>8-8</sup> convient ε. <sup>9</sup> a adds *Ingham* Lassise est done par statut ou le quod permittat soleit seruir a prendre profit en altri soel qe voet estre porte uers le tenaunt par quei couient qe le seigneur du soil soit nomee. <sup>10-18</sup> Si ieo eye tenaunt et disseisor assez me suffit. Estre ceo a. <sup>11-13</sup> ai autre tenant ζ. <sup>12-14</sup> autre bref mes ay ieo autre tenant et disseisor δ. <sup>14-15</sup> from ε; et prioms lassise ζ. <sup>16-18</sup> ζ omits. <sup>17-19</sup> si jeo entenke certains tenementz ε. <sup>20-20</sup> un estraunge me disseise a. <sup>21</sup> δ adds qi mad ouste. <sup>22-22</sup> a omits. <sup>23</sup> from this point to end a reads:—

HERVI. donqe aueroit le Roi porte encountre sa volente et les paroles dil especialte qe lercevesqe auoit fet au gardein sur quei lassise fut porte furent tieux Concessi eciam dicto duo poteria (*sic*) curie mee Cantebirs et pur ceo *Stonore*. auoit primes fet la pleinte solem les paroles dil especialte et puis fit sa pleinte de la garde de la porte du paleys et puis par conseil SPIGURNEL fit la pleinte de la garde de la mansioun etc. *Hengham*. cest assise est donec par statut et ceo soulement pour haster remedie en lieu de quod permittat et ne mie uers autres persones qe le quod permittat ne gist point auant statut mes si le quod permittat fut porte couendrait estre uers le seigneur par quei il couient qe le seigneur soit nomee etc.

<sup>24-24</sup> ζ omits. <sup>25-25</sup> ala vaillance δ. <sup>26</sup> HERUY δ. <sup>26-27</sup> qe ζ. <sup>27-28</sup> ad δ. <sup>29</sup> estre δ. <sup>30</sup> ζ adds ceste assise est done par estatut mes. From <sup>30</sup> to end δ reads: Cest assise est done par estatut mes il fut al quod permittat il ly couendra porter bref vers le seigneur du soil etc. pur que il couient qe le seigneur seit nome. <sup>31-33</sup> ζ omits. <sup>32-33</sup> from ε; γ has blank space between brackets. <sup>34-34</sup> ζ omits. <sup>35</sup> ζ adds after full stop, JUSTICE. <sup>36</sup> from ε. <sup>37</sup> en le bref et sic pendet quere veritatem ζ.



that if you want to recover common of pasture by assize you must name the lord of the soil in your writ. Further, we see that the Archbishop may come and say that he who brings this writ has released and quitclaimed etc.; and therefore it is right that he should be privy.

*Stonore.* Sir, by no means can that be so when I lay the tenements in another; and here—and *note this*—we have a tenant and a disseisor, wherefore etc. And, further than this, Sir, I very confidently submit that if I have the custody of a forest and any other than the lord eject me I shall get my assize against such an one without naming the lord. So here.

STAUNTON J. Ought the King to have a porter thrust upon him against his will?—*inferring the negative.*

The Archbishop's charter conferring the custodianship upon an ancestor of the plaintiff ran in this wise:—‘I have granted to the said J. the office of porter of my court at Canterbury.’ The plaint was laid after these words; but originally it was laid in respect of the custodianship of the court of the Archbishop, and then of the custodianship of the door etc. of the palace etc., but afterwards the parties agreed, upon the form of words given above, by the advice of

SPIGURNEL J. who said that he had seen a *precipe quod reddat* claiming a manorhouse maintained.

*Ingham.* The statute<sup>1</sup> granting the assize was enacted merely for the purpose of avoiding the delay which ensued under the *quod permittat*; and, as the writ in a *quod permittat* would have to be brought against the lord of the soil, so here the lord of the door ought to be named etc.

<sup>1</sup> Statute of Westminster II. cap. xxv.

II.<sup>1</sup>

Un Henri porta bref de novel disseisine vers un Willem de Cantebirs et fit sa plainte en ceste forme<sup>2</sup> de la garde de la grant porte de Maner l'erchevesche de Cauntebirs en Cauntebirs.

*Pass.* <sup>3</sup>le erchevesche<sup>4</sup> de Cauntebirs est en la mein le Roy par reson de voidance jugement <sup>5</sup>de cet bref.<sup>6</sup>

*Ston.* nous pleignons pas de ceo<sup>7</sup> qe est en la garde le Roy<sup>8</sup> enz fesoms de la garde dont il<sup>9</sup> est tenant et disseisi et prioms lassise.

*Hengh.* cet bref de garde de porte est done par statut pur plus hastif remedie auer qe auant statut ne fut en lu de quod permittat<sup>10</sup> mais le quod permittat<sup>11</sup> ne girreit pas sinon vers seignour du soil et le erchevesqe qe est tenant du soil qi ne est pas nome en ceti bref jugement etc.

*Ston.* nous auoms en nostre bref tenant de nostre demande et disseisour estre en cas si ieo ay la garde de un park et un estranger mey oste et le seignour de park ne<sup>12</sup> mette pas la mein ieo aueray bon bref de disseisine sanz nomer le seignour ausi de ceste part.

*Ingh.* meme le chalenge qe nous dioms<sup>13</sup> a ceti bref en le cas qe vous alegget.

*STANT.* si le ercheuesqe fut nome et meist auant reles et quitclame il <sup>14</sup>le poit user.<sup>15</sup>

*Ston.* si Willem ust respondu com tenant ausicom il ad ore le erchevesqe ne serreit pas ressu devers reles et quiteclame en barre de assise.

*STANT.* averiet<sup>16</sup> une assise de comune de pasture si le seignour de soil ne fut nome quasi diceret non.

*Ston.* il semble qe oil ausicom il<sup>17</sup> aueriet le precipe quod reddat pasturam ad certum numerum averiorum etc. vers celi qi ne est pas seignour de soil en quel cas le quod permittat ne git pas.

*Lauf.* <sup>18</sup>nous avoms le<sup>19</sup> precipe quod reddat de garde de porte uers celi qi ne fut pas seignour du soil.

<sup>1</sup> Text of (II) from  $\eta$  collated with  $\theta$ .      <sup>2</sup> manere  $\theta$ .      <sup>3-4</sup> Lers Evesqe  $\theta$ .  
<sup>5-6</sup> si cesti bref igise  $\theta$ .      <sup>7</sup> le port  $\theta$ .      <sup>8</sup>  $\theta$  adds etc.      <sup>9</sup> William en  $\theta$ .  
<sup>10-11</sup> added from  $\theta$ .      <sup>12</sup>  $\theta$  adds y.      <sup>13</sup> donoms  $\theta$ .      <sup>14-15</sup> qi li veeroit  
quod nul home (*sic*)  $\theta$ .      <sup>16</sup> averies vous  $\theta$ .      <sup>17</sup> home  $\theta$ .      <sup>18-19</sup> home ad  
bien veu  $\theta$ .

## II.

One Henry brought a writ of novel disseisin against one William of Canterbury and laid his plaint after this wise, 'of the custody of the great door of the manor-house of the Archbishop of Canterbury in Canterbury.'

*Passeley.* The Archbishopric of Canterbury is in the King's hand by reason of the vacancy of the see. Judgment of this writ.

*Stonore.* We do not make plaint in respect of aught that is in the King's hand, but we make it in respect of the custodianship of which the demandant is tenant and of which he has been disseised, and we pray the assize.

*Ingham.* This writ to recover the custody of a door is given by the statute<sup>1</sup> to provide a more expeditious remedy than could be got by the *quod permittat* which lay previously to the statute. But the *quod permittat* would lie only against the tenant of the soil; and the Archbishop is tenant of the soil and he is not named in this writ. Judgment etc.

*Stonore.* In our writ we have a tenant of our demand and a disseisor. Besides this, if I have the custody of a park and a stranger oust me and the lord of the park do not intervene, I can have a good writ of disseisin without naming the lord. So here.

*Ingham.* We should make exactly the same objection as we do here to such a writ as you instance.

STAUNTON J. If the Archbishop were named and produced release and quitclaim the defendant might profit.

*Stonore.* If William were to answer as tenant, as he now has answered, the Archbishop would not be received to tender release and quitclaim in bar of assize.

STAUNTON J. Could you get an assize of common of pasture without naming the lord of the soil?—*inferring the negative.*

*Stonore.* I think that you could, since you might have the *precipe quod reddat* for a certain number of beasts etc. against one who is not lord of the soil and against whom the *quod permittat* does not lie.

*Laufer.* We have instances of the *precipe quod reddat* being brought against others than lords of the soil for the recovery of the custody of a door.

<sup>1</sup> Statute of Westminster II. cap. xxv.



NORTON v. ASTON.<sup>1</sup>I.<sup>2</sup>

Disseisina.

Jon porte assise de novel disseisine vers Richard et se plaint <sup>3</sup>estre disseisi de ij.s.<sup>3</sup> de rente etc.

*Westcote* nous tenoms de lui par feaute certaines tenementz et par les services de x.s. Jugement del heure <sup>4</sup>que nous tenoms de ly par tels services e il<sup>4</sup> est seisi de les viij.s. si des ij.s. qe sount parcele de x.s. assise deyve avoir.

La cause de la disseisine fust qil avoit destreint pur les ij.s. et il avoit fet la deliveraunce et pur ceo qil fust seisi de les viij.s. et il vist bien qil ne pout mie avoir lassise des ij.s. qe furent parcele etc. il pria conge de querir meilour bref <sup>5</sup>e la fust dit qe si un home ad un corrodie et soit deforcie de partye qe il covient weyver tut ou il ne avera pas la seisine de partye etc.<sup>5</sup>

II.<sup>6</sup>

<sup>7</sup>Le Priour de B.<sup>8</sup> porta un assise de nouel disseisine vers <sup>9</sup>un A.<sup>9</sup> et se plaint estre disseisi de ij.s. de Rente <sup>10</sup>oue les appurtenances.<sup>10</sup>

*Cant.*<sup>11</sup> la ou il se plaint estre disseisi de ij.s. de rente nous vous dioms qe <sup>12</sup>nous tenoms<sup>12</sup> les tenemenz mis en vewe <sup>13</sup>de ly<sup>13</sup> par les services<sup>14</sup> de ix.s.<sup>15</sup> pour touz services des queux services il meme est seisi jugement si assise deïue estre.<sup>16</sup>

<sup>17</sup>*Lauf.* nous vous dioms qe vous tenez memes les tenemenz<sup>17</sup> de nous par les services de xj.s. par an <sup>18</sup>dount nous sumes paie de<sup>19</sup> ix.s. et pur ceo qe les ij.s. furent arriere <sup>20</sup>et pur ceo qe les services furent arriere<sup>20</sup> nous destreignimes et vous feistes la rescous et issint auez nous disseisi<sup>21</sup> et prioms lassise.

*Ingham.* et nous jugement <sup>22</sup>del hour<sup>22</sup> qe vous auez dit <sup>23</sup>qe nous tenoms<sup>24</sup> de vous ceux tenemenz par certain services les queux services

<sup>1</sup> Reported by a, γ, δ, ε, ζ, η and θ. F.A., *Assise*, 387. <sup>2</sup> Text of (I) from γ collated with ε. Names of parties from η and θ. <sup>3-3</sup> from ε; etc. γ. <sup>4-4</sup> from ε; qil γ. <sup>5-5</sup> from ε. <sup>6</sup> Text of (II) from δ collated with ζ, η and θ. <sup>7-8</sup> William de Nortone η; John de Norton θ. <sup>8</sup> C. ζ. <sup>9-9</sup> William de Astone η, θ. <sup>10-10</sup> η omits; etc. θ. <sup>11</sup> *Ingham* η, θ. <sup>12-12</sup> meme cete William tient η, θ. <sup>13-13</sup> par fealte et η; dont ceste rente etc. par fealtie et θ. <sup>14</sup> justices θ. <sup>15</sup> ζ adds par an. <sup>15-16</sup> par an dont vous estes huy ceo iour seisi jugement etc. η, θ. <sup>17-17</sup> *Toudebi.* Vous tenet η, θ. <sup>18-19</sup> et vous nous paiastes ζ. <sup>20-20</sup> ζ omits. <sup>18-21</sup> dont les ij.s. outre les ix.s. furent areres pour lez qeus nous feimus destresse et vous fetes la rescouse η, θ. <sup>22-22</sup> depuis η, ζ. <sup>23</sup> conu η, θ. <sup>24-3</sup> (on p. 100) par lez services de ix.s. qe est un gros et un service, et avet conu qe vous estes seisi de ix.s. qe est de gros jugement si de la parcele deuet lassise aver η, θ. From this point to end η and θ (with slight variations) read :—

*Toudebi.* si ieo tingne une carue de terre qe est un gros et ieo sey ouste de la meindre acre ie aueray lassise.

SPIGURNEL. cet un profit issant de certain tenemenz et est dowe par reson de

NORTON *v.* ASTON.

## I.

John brings an assize of novel disseisin against Richard and complains of being disseised of two shillings of rent etc. Disseisin,

*Westcote.* We [i.e. Richard] hold certain tenements of him [i.e. John] by fealty and a service of ten shillings. Judgment whether seeing that we hold of him by such services and that he is seised of eight shillings, he ought to have an assize in respect of the two shillings which are parcel of the ten shillings.

The cause of the disseisin was that the demandant had distrained for two shillings and the tenant had replevied; and the demandant recognised that, being seised of the eight shillings, he could not have an assize for the two shillings, as they were parcel etc., and he prayed leave to sue out a better writ. And it was said that if a man have a corrody and be deforced of part of it he must waive the whole or he will not get seisin of the parcel etc.

## II.

The Prior of B. brought an assize of novel disseisin against one A. and complained that he had been disseised of two shillings of rent together with the appurtenances.

*Cambridge.* Whereas he tells you that he has been disseised of two shillings of rent, we tell you that we hold the tenements put in view of him by the service of nine shillings for all services, and of this service he is seised. Judgment whether assize ought to pass.

*Laufer.* We tell you that you hold these same tenements of us by the service of eleven shillings a year, of which you have paid us nine shillings. And because the two shillings were in arrear, and therefore the service was in arrear, we distrained and you replevied, and so you have disseised us, and we pray the assize.

*Ingham.* And we pray judgment since you have said that we hold these tenements of you by certain services, which savour of a freehold,

<sup>1</sup>entresoune en<sup>1</sup> franctenement et <sup>2</sup>vous auez conu qe vous estes seisi de partie<sup>2</sup> jugement si de la parcele assise deiue estre.<sup>3</sup>

*Toud.* si ieo soy seisi de x. acres de terre <sup>4</sup>les tenemenz enter sunt en ma seisine com de franctenement<sup>4</sup> et si ieo sey disseisi de <sup>5</sup>partie de celle parcele ieo aueray<sup>5</sup> lassise auxi par decea.

*Lauf.* ieo pourray demander ceux ij.s. par bref de custumes et de services.

SPIGURNEL. de ceo nentendez<sup>6</sup> pas qe vous auerez lassise etc. et si<sup>7</sup> poez destreindre et ceo ne proue<sup>8</sup> pas qe vous auerez lassise qar en Replevine si poez pleder le droit des services.

HERUY. si <sup>9</sup>vous fuissiez<sup>9</sup> seisi de <sup>10</sup>un corrodie de<sup>10</sup> iij. painz etc. et iij. galouns de ceruois<sup>11</sup> et homme vous oustereit de un galoun et de un pain vous nauerez pas de cele parcele lassise nient plus par de cea.<sup>12</sup>

*Toud.* si auerez.

*Lauf.* nous dioms qil tient de nous ceux tenemenz mis en vewe par les services de xj.s. des queux services nous fumes seisi par my la mayn un B. le quel B. de ceux tenemenz lauantdit A. enfeffa pus quel feffement A. sattorna a nous et sumes seisi par my sa mayn de memes les ij.s.<sup>13</sup> et pur ceo qe les ditz ij.s. furrent arriere nous destreignimes et il fist le rescous et issint sumes disseisi et prioms lassise.

SPIGURNEL. pur quei nussez vous nome en bref cely par qi mayns vous futes seisi de <sup>14</sup>cele rente.<sup>14</sup>

*Lauf.* ieo pose qe ieo sey seisi par my la mayn moun tenant <sup>15</sup>de certeinz services pus mon tenant<sup>15</sup> deuie son <sup>16</sup>heyre entre en son heritage<sup>16</sup> mes services sunt arriere pur que ieo destreigne il face le rescous ieo aueray lassise vers ly et si<sup>17</sup> fui ieo unqes seisi par my sa mayn pur quei etc.

SPIGURNEL. il semble uncore qe vous nauez disseisour et tenant <sup>18</sup>et vostre bref et<sup>18</sup> vostre cas est qe vous fustes seisi de xj.s. par my

fee et de seignourie et vous conisez qe vous estes seisi de partie de la rente et issi estes enz en la seignourie et si vous ussez lassise de parcele vous supposez estre hors qe sereit contrarie a vostre conisance. Mes issi nest ceo pas de terre qe est demene.

STAUNTONE. nous veimes ou une assise fut porte de tonnu et la plainte fete de tonnu prendre pour iour de Mekerdie et pur ceo qe conu fut qe le plaintiff fut tous lez altres iours de la simaingne seisi et ceo fut un profit enter qe est un franctenement fut agarde qil prist rien par son bref. Ita ex parte ista. Et estre ceo la ou ieo ai un corodie de iij. pains et iij. galons de serueise etc. et un pain seit arrere quidez vous auer lassise quasi diceret non. Et dictum fuit per quosdam qil sereit bon de fere sa plainte delentier et estre amercie pour sa fause plainte de ceo qil fut seisi et pur ceo qe le plaintiff vist qe le jugement ust a le encountre ly il pria conge de querer meillour bref et habuit.

<sup>1-1</sup> enteres sunt un ζ. <sup>2-2</sup> estes pleint ester disscisi de parcel η.  
<sup>3</sup> See note <sup>24</sup>, p. 99. <sup>4-4</sup> tel terre est un entere franctenement en ma seisine η.  
<sup>5-5</sup> un acre jeo usuray bien ζ. <sup>6</sup> nen fut il ζ. <sup>7</sup> vous ζ. <sup>8</sup> suist ζ.  
<sup>9-9</sup> jeo fus ζ. <sup>10-10</sup> ζ omits. <sup>11</sup> ζ adds par un corodie. <sup>12</sup> Throughout  
 this paragraph ζ uses first person singular. <sup>13</sup> ix.s. ζ. <sup>14-14</sup> les ij.s. ζ.  
<sup>15-15</sup> et il ζ. <sup>16-16</sup> fiz entre et ζ. <sup>17</sup> ζ adds ne. <sup>18-18</sup> qar ζ.



and you have admitted that you are seised of parcel. Judgment whether assize should come in respect of a parcel.

*Toudeby.* If I be seised of ten acres of land the whole of the tenements are in my seisin as of freehold, and if I be disseised of a parcel I shall have the assize. So here.

*Laufer.* I can demand those two shillings by a writ of customs and services.

SPIGURNEL J. Do not suppose that you will get an assize for this ; and is not the fact of your being able to distrain reason sufficient why you should not have an assize ; for if the distress be replevied you can plead your right to the service ?

STAUNTON J. If you were seised of a corrody of three loaves etc. and four gallons of beer, and you were ousted of one gallon and one loaf you would not get an assize for that parcel. No more will you here.

*Toudeby.* Yes, you will get it.

*Laufer.* We tell you that he holds these tenements put in view of us by the service of eleven shillings, of which service we were seised by the hand of one B., which B. enfeofed the aforesaid A. of these tenements ; after that enfeofment A. attorned himself to us, and we are seised by his hand of these same two shillings ; and because the said two shillings were in arrear we distrained, and he replevied, and so we are disseised and we pray the assize.

SPIGURNEL J. Why did you not name in your writ him by whose hand you were seised of this rent ?

*Laufer.* Suppose that I am seised of certain services by the hand of my tenant and that my tenant dies and that his heir enters upon his heritage, and that, my services being in arrear, I distrain and that he replevies. I shall have the assize against him, and yet I was never seised by his hand. Wherefore etc.

SPIGURNEL J. We are still of opinion that you have not disseisor and tenant. Your writ and counting are that you were seised of

la mayn P.<sup>1</sup> le feffour et par my la mayn P. le feffour si noun de ix.s.<sup>2</sup> etc.

Et pus pria il conge denquerir meillour bref et habuit.

### III.<sup>3</sup>

Assisa nouel disseisine de rente etc. ou fut dit qil couendreit destreindre pur ceo qil conust qil fut seisi de partie de la rente et ceo fut un gros que ne put mie estre seure.

Le Priour de B. porta un assise de nouel disseisine uers B. de deus etc. de rente service et mist en vewe certains tenemenz dount cele rente fut issaunte.

*Wescote.* B. vous respount com tenaunt des tenemenz mis en vewe et vous dit qil tient les tenemenz del Priour par les seruices de ix.s. des queux il est mesmes seisi et demaundoms jugement si assise deiue estre.

*Laufar.* de ceo que nous sumes disseisi couient il que nous pleignons et prioms lassise que de les ij.s. sumes disseisi.

*Wescote.* seoms a un si les ij.s. soient de les ix.s.

*Laufar.* vous tenez de nous les tenemenz par les seruices de xj.s. et de les ij.s. nous auez disseisi prest etc.

*Wescote* demaunda jugement dil heure que cest un fraunc tenement de qi. vous conusez estre seisi si assise etc. que si ieo eye vne corodie de deus pains le iour et de deus galouns de ceruoise et si ieo soie seisie du pain ieo ne purrei paas vser lassise de la ceruoise pur ceo que ceo est tut un fraunc tenement.

*Hertepol.* la ou ieo soie feffe de xij. acres de terre tut est un fraunc tenement et ieo seye deforce de vne acre ieo vserai de cele acre lassise.

*SPIGURNEL.* chescun acre est un fraunc tenement et tote la rente nest forsque un fraunc tenement par la seisine de j.d. puet destreindre lentier de la rente.

*Laufar.* Ieo puisse vser en cest caas bref custumes et de seruices pur les ij.s.

*Herui.* ceo ne preeue paas que vous auerez lassise que auxi puet destreindre et si nauerez pas lassise que ieo vy deuaunt touz les Justices Dengeltere ou un Abbe auoit porte un assise de nouel disseisine de tolun prendre en vne certeine vile un jour de la semaine et le defendaunt

<sup>1</sup> John ζ.

<sup>2</sup> from ζ; δ has xj.s.

<sup>3</sup> Text of (III) from a.

eleven shillings by the hand of P. the feoffor, whereas you were seised of only nine shillings by the hand of P. the feoffor.

And afterwards the demandant prayed leave to sue out a better writ and had it.

## III.

Assize of novel disseisin of rent etc. where it was said that the demandant's remedy was by distress, as he admitted being seised of a parcel of a rent which was a gross and could not be divided into parcels.

The Prior of B. brought an assize of novel disseisin against B. for two shillings of rent service, and he put in view certain tenements from which this rent issued.

*Westcote.* B. answers you as tenant of the tenements put in view and tells you that he holds the tenements of the Prior by the service of nine shillings, of which the Prior is seised, and we ask judgment whether assize ought to pass.

*Laufer.* We are entitled to make plaint of so much as we have been disseised of, and we pray the assize, for we have been disseised of two shillings.

*Westcote.* Let us come to an agreement as to whether or not these two shillings are a parcel of the nine shillings.

*Laufer.* You hold the tenements of us by the service of eleven shillings, and you have disseised us of the two shillings. Ready etc.

*Westcote* asked judgment whether, seeing that this is a freehold of which you admit that you are seised, the assize should be awarded; for if I have a corrody of two loaves a day and two gallons of beer, and if I be seised of the bread I cannot have an assize for the beer, because the whole is but one freehold.

*Hartlepool.* If I be enfeoffed of twelve acres of land as of a single freehold and be disseised of one acre, I shall have the assize for that acre.

SPIGURNEL J. Each acre is a freehold; but the whole rent is but a single freehold, and if you have seisin of but a penny of it you can distrain for the whole of it.

*Laufer.* In the present circumstances I might have a writ of customs and services for the two shillings.

STAUNTON J. That does not prove that you will have the assize; for since you can distrain, you will not get the assize; for I have seen where, before all the Justices of England, an Abbot brought an assize of novel disseisin in respect of a toll leviable in a certain town one day in the week, and the defendant said that the Abbot had the toll every



dit qil auoit le tolun touz les jours de la semaille et demanda jugement si de un jour en cest cas assise duist estre et par touz les justices fut le bref abbattu par quei il couient qe vous aillez a la destresce.

Et *Laufar*. pria counge etc.

### NOTA.<sup>1</sup>

Similiter<sup>2</sup> nota qaunt un homme ad un profit a terme de vye ou en fee com garde de porte ou de prisoun ou dautre semblable qe sil<sup>3</sup> soit oste del principal il navera nule assise de chose apendante al principal car il est bon response a <sup>4</sup>barrer lassise<sup>5</sup> qil nest pas seisi del principal com il avynd dun qi porta assise vers labbe de Westminster<sup>6</sup> de la garde de la porte qe fust apendante a la garde de la prisone qi barre fust par tiel response etc.

### MERDALE v. MERDALE.<sup>7</sup>

#### I.<sup>8</sup>

Assisa venit recognitura si Willelmus filius Petri de Merdhale<sup>9</sup> Roggerus filius Roggeri de Tokintone<sup>10</sup> et alii<sup>11</sup> iniuste etc. diseisiuerunt Petrum de Merdhale de libero tenemento suo in Renham<sup>12</sup> et Hertele<sup>13</sup> etc. et unde queruntur etc. de uno mesuagio cum pertinenciis etc.

Et Willelmus filius Petri venit et alii non venerunt set quidam Iohannes de S.<sup>14</sup> respondet etc.<sup>15</sup> tamquam eorum balliuus. Et dicit quod ipsi <sup>16</sup>non habent etc.<sup>17</sup> nec fecerunt iniuriam.<sup>18</sup> Et Willelmus filius Petri respondet ut tenens et dicit quod predictus Petrus iniuste tulit assisam etc. Dicit enim quod predictus Petrus nunquam fuit in seisina de predictis tenementis ut de libero tenemento suo ita quod inde poterit<sup>19</sup> disseisiri et de hoc ponit se super assisam.

Et predictus Petrus similiter.

Ideo capiatur assisa.

Iuratores dicunt per sacramentum suum quod predicta tenementa in visu posita tenentur in gauelkynde et sunt medietas unius mesuagii xx. acrarum terre et vj.<sup>20</sup>s. redditus cum pertinenciis etc. que aliquo tempore fuerunt in seisina predicti Petri <sup>21</sup>ut<sup>22</sup> de iure et hereditate

<sup>1</sup> Note from γ, δ, ε, ζ. Text from γ collated with the others. <sup>2</sup> δ omits.  
<sup>3</sup> ζ adds ne. <sup>4-5</sup> dire ε. <sup>6</sup> ζ adds a dire. <sup>7</sup> W. δ. <sup>7</sup> Reported by a, aa, β, γ, γγ, δ (twice—in Latin and in French), ε, ζ, η and λ. Names of the parties from E.R. (m. 18) <sup>8</sup> Text of (I) from a collated with β, δ, λ and E.R.  
<sup>9</sup> Merdale E.R. <sup>10</sup> Toketone E.R. <sup>10-11</sup> Willelmus de Heremon destaple Willelmus Donet et Willelmus le suor de Renham E.R. <sup>12</sup> Roweham β.  
<sup>13</sup> Hertlepe E.R. E.R. and δ add post primam. <sup>14</sup> Schous λ; Suthwerk E.R.  
<sup>15</sup> pro eis δ, E.R. <sup>16-17</sup> nichil habent in predictis tenementis δ, E.R.  
<sup>18</sup> E.R. adds seu disseisinam. <sup>19</sup> potuit E.R. <sup>20</sup> xv. δ; sexdecim E.R.  
<sup>21-2</sup> (on p.103) δ omits. <sup>22</sup> from the other texts and E.R.; et a.

day of the week, and asked judgment whether, in the circumstances, assize ought to be in respect of one day ; and the writ was abated by all the Justices. Wherefore you must betake yourself to your distress.

And *Laufer* prayed leave etc.

#### NOTE.

Note that in like manner when one has an office of profit for the term of his life or in fee, such as the custody of a door or of a prison or other of the like, and be ejected from his principal office, he will not get an assize for aught that is appendant to his principal office ; for to say that he was not seised of the principal would be a good plea in bar of an assize ; and this happened in the case of one who sought an assize against the Abbot of Westminster to recover the custody of the door, which was appendant to the custody of the prison, and was barred by a plea in that form.

#### MARDEN *v.* MARDEN.

##### I.

The assize comes to recognise whether William the son of Peter of Marden, Roger the son of Roger of Tottington and others unjustly etc. disseised Peter of Marden of his freehold in Rainham and Hartlip etc. in respect of which he complains etc. of a messuage together with the appurtenances etc.

And William the son of Peter came and the others did not come, but a certain John of S. answers etc. as their bailiff. And he says that they have naught etc. and that they have done no wrong. And William the son of Peter answers as tenant and says that the aforesaid Peter wrongly brought the assize etc. ; for he says that the aforesaid Peter never was in seisin of the aforesaid tenements as of his freehold so that he could be disseised of them, and of that he puts himself upon the assize.

And the aforesaid Peter does likewise.

Therefore an assize is to come.

The jurors say upon their oath that the aforesaid tenements put in view are holden in gavelkind and constitute the moiety of a messuage of twenty acres of land and six shillings of rent together with the appurtenances etc. which was formerly in the seisin of the aforesaid

<sup>1</sup> See *Year Book* 22 Edward I (Rolls Series), p. 576.

Agnetis uxoris predicti Petri de qua procreavit duos filios Willelmum<sup>1</sup> filium Petri<sup>2</sup> et quendam Rogerum. Post mortem eiusdam Agnetis medietas eorum tenementorum remansit<sup>3</sup> secundum consuetudines<sup>4</sup> de gauelykinde predicto Petro tenenda ad terminum vite sue<sup>5</sup> scilicet tamdiu quam sine alia uxore ducenda se tenuerit et altera medietas eorundem tenementorum inter eosdem Willelmum filium Petri et quendam Rogerum fratrem eius equaliter partita fuit. Et dicunt quod postea predicto Willelmo filio Petri etatis sexdecim annorum existente quando idem Willelmus plene etatis fuit secundum consuetudinem de gauilkynde<sup>6</sup> scilicet post sexdecim<sup>7</sup> annum completum<sup>8</sup> per quoddam scriptum et confectum apud Londiniam concessit et dimisit<sup>9</sup> omnes terras suas et tenementa cum pertinenciis que habuit vel habere potuit in villis predictis per successionem hereditatis<sup>10</sup> de predicta Agnete matre predicti Willelmi habenda et tenenda predicto Petro ad terminum vite ipsius Petri predictis tenementis unde assisa aramiata est in seisina predicta existentibus. Qui quidem Willelmus postea rediens ad predicta tenementa factum suum predictum<sup>11</sup> notificauit et ratum habuit. Et dicunt<sup>12</sup> quod post modum predictus Petrus se maritauit<sup>13</sup> et quod predictus Roggerus<sup>14</sup> postnatus quam cito constabat ei quod predictus Petrus pater suus se maritauit ut predictum est vendicauit residuum predictae medietatis quam predictus Petrus prius<sup>15</sup> tenuit secundum consuetudinem<sup>16</sup> de gauilkynde<sup>17</sup> quod ei acreuit occasione ea<sup>18</sup> quod predictus Petrus accepit uxorem. Et quod idem Petrus<sup>19</sup> medietatem dicte medietatis<sup>20</sup> quam idem Petrus<sup>21</sup> tenuit per consuetudinem predictam<sup>22</sup> de proparte ipsius Roggeri liberauit eidem Rogero. Et quod predictus Willelmus querens sciens quod predictus Petrus pater suus ceperat uxorem ut predictum est nullum clamorem<sup>23</sup> appositus versus predictum Petrum<sup>24</sup> pro parte de hereditate predicta habenda set morabatur cum<sup>25</sup> ipso Petro<sup>26</sup> per unum annum et dimidium post quam idem Petrus ceperat suam uxorem predictam absque aliquo impedimento predicto Petro inde faciendo<sup>27</sup> et sic idem Petrus remansit in seisina de predictis tenementis per totum tempus predictum quo usque idem<sup>28</sup> Willelmus filius Petri ipsum Petrum inde eiecit.

Ideo datus est dies eis ad audiendum iudicium suum.

<sup>1</sup> Walterum λ. <sup>2</sup> see note 21 on p. 102. <sup>3</sup> δ, E.R. *add* et remanere debuit. <sup>4</sup> consuetudinem δ, E.R. <sup>5</sup> *supplied from* β; *a omits*; ipsius Petri E.R. <sup>6-8</sup> λ *omits*. <sup>7</sup> xv. β. <sup>9</sup> E.R. *adds* predicto Petro. <sup>10</sup> hereditariam E.R. <sup>11</sup> *from* δ and E.R.; *a has* preiudiciatum; β *omits*; E.R. *adds* patrie. <sup>12</sup> *from* E.R.; *dicat a*. <sup>13</sup> δ and E.R. *add* et cepit uxorem. <sup>14</sup> E.R. *adds* frater. <sup>15</sup> *added from* E.R. <sup>16-17</sup> predictam E.R. <sup>18</sup> *a and* E.R. *omit*. <sup>19-20</sup> *from* E.R.; *a omits*; medietatem predictam β; predictae medietatis δ. <sup>21-22</sup> *from* β, δ, and E.R.; *a omits*. <sup>23</sup> E.R. *adds* de Gauelykinde. <sup>24</sup> clamium β, E.R. <sup>25</sup> λ *ends here*. <sup>26-28</sup> *from* β and E.R.; *a has* ipse Petrus. <sup>27</sup> facto β. <sup>28</sup> predictus E.R.



Peter as of the right and heritage of Agnes the wife of the aforesaid Peter, of whom he begat two sons, William the son of Peter, and a certain Roger. Upon the death of the said Agnes a moiety of those tenements remained, according to the custom of gavelkind, to the aforesaid Peter to be held by him for the term of his life, that is to say as long as he remained without taking a second wife to himself; and the other moiety of the same tenements was equally divided between the said William the son of Peter and a certain Roger his brother. And they say that afterwards, at a time when the aforesaid William the son of Peter being of the age of sixteen years was of full age according to the custom of gavelkind, that is to say upon the completion of the sixteenth year, the said William by a certain deed written and executed in London granted and demised all his lands and tenements with the appurtenances which he had or might have in the vills aforesaid through his succession to the inheritance of the aforesaid Agnes his mother to the aforesaid Peter to have and to hold for the term of his life, the aforesaid tenements in respect of which assize is now arraigned being in the seisin of the aforesaid [Peter].<sup>1</sup> And the aforesaid William, upon his return to the aforesaid tenements, published and confirmed his deed aforesaid. And they say that the aforesaid Peter afterwards married, and that as soon as his younger son Roger had notice of the marriage of the aforesaid Peter his father as aforesaid, he laid claim to the aforesaid other moiety, which the aforesaid Peter previously held in accordance with the custom of gavelkind, and which now accrued to himself by reason that the aforesaid Peter had taken a wife. And [they say] that the same Peter delivered a moiety of the said moiety which the said Peter held by the custom aforesaid to the said Roger as his the said Roger's share. And that the aforesaid William, the plaintiff, being aware that the aforesaid Peter, his father, had taken a wife as is aforesaid, made no claim against the aforesaid Peter to receive possession of his share of the inheritance, but continued to live with the said Peter during the space of a year and a half after that the said Peter had taken his aforesaid wife without making any objection touching the matter, and so the same Peter continued himself in seisin of the aforesaid tenements throughout the whole time aforesaid until the same William the son of Peter ejected the same Peter thereout.

Therefore a day is given them for hearing their judgment.

<sup>1</sup> Supplied from E.R.

<sup>1</sup>Ideo consideratum est quod predictus Petrus recuperet seisinam suam de medietate predictorum tenementorum unde queritur se disseisiri scilicet de illa medietate que cecidit in proparte predicti Willelmi filii Petri quando particionacio predicta facta fuit inter ipsum Willelmum et Rogerum fratrem eius ut predictum est per visum recognitorum et dampna sua que taxantur per eosdem ad unam marcam. Et Willelmus filius Petri in misericordia etc. Et quoad alteram medietatem eorundem tenementorum que remansit predicto Petro post mortem predictæ Agnetis tenenda eidem Petro secundum consuetudinem de Gavelykynde in forma predicta ut predictum est.<sup>2</sup>

II.<sup>3</sup>

Disseisina.

Pieres de Meredale porte assise de novel disseisine vers Willem son fitz et se pleint <sup>4</sup>estre dissessi<sup>4</sup> de xx. acres de terre etc. Willem dit qil navoit nul fet tort par qey lassise fust agarde qe vynt et dit qe ceus tenementz furent en la seisine une Agnes miere Willem com son heritage et disoient qe Pieres esposa cele Agnes et engendra cesti Willem et disoient qe Agnes morust et Willem entra en la moyte des tenementz com en son heritage et Pieres tynt lautre moyte solom le usage de Kent qe est qe le baron tendra la moite des tenementz en tiel cas taunt com il se tient soul mes sil se marie il le forfet al heir et disoient qe Willem bailla peus a son piere les tenementz dount il fust tenant taunt com il feust denz age et peus ly fist un fet qe voleit qil graunta lessa et confirma a Pieres son piere touz les tenementz qil avoit ou aver pout par la mort sa mere<sup>5</sup> en tiele ville a tenir les a tute sa vye et disoient qe apres Pieres prist femme peus Willem vynt a lostel et feust de age et demora ove son piere ij. aunz et peus osta son piere del entier.

SPIGURNEL gaunt a la moyte dount Willem feust seisi com de son heritage et le bailla a son piere et peus lad disseisi encountre son fet demene si agard <sup>6</sup>al curt<sup>6</sup> qe Pieres recovere sa seisine etc.

Qaunt al autre moite qe Pieres tynt solom les usages de Kent——

*Pas.* dit Sire il ne peut rien recoverir qar il ne peut estre eide si noun par le fet qe Willem fist mes ceo ne lui peut valer qar avant le fet et en le fet si avoit piere fraunktenement solom le usage dount par fet qe ne

<sup>1-2</sup> Supplied from E.R. <sup>3</sup> gives the following version of the judgment: *Ideo consideratum est quod predictus P. recuperet seisinam suam de medietate que descendit in purparte predicti W. filii P. quando particio predicta facta fuerit inter ipsum W. et R. fratrem eius ut predictum est per visum recognitorum et dampna sua que taxantur per eosdem ad j. marcam. Et W. filius P. in misericordia etc.*

<sup>3</sup> Text of (II) from  $\gamma$  collated with  $\epsilon$ . <sup>4-4</sup> from  $\epsilon$ ; etc.  $\gamma$ . <sup>5</sup> from  $\epsilon$ ;  $\gamma$  has niece here, but mere subsequently. <sup>6-6</sup> from  $\epsilon$ ; etc.  $\gamma$ .



Judgment is thereupon given that the aforesaid Peter recover by view of the recognitors his seisin of a moiety of the aforesaid tenements in respect of which he complains that he has been disseised, that is to say, of that moiety which fell to the share of the aforesaid William the son of Peter when the aforesaid apportionment was made between himself and Roger his brother, as is aforesaid ; and also his damages which are taxed by the same [recognitors] at one mark. And William the son of Peter is in mercy etc. And, as to the other moiety of the same tenements which remained to the aforesaid Peter upon the death of the aforesaid Agnes, this is to be held by the same Peter according to the custom of Gavelkind in the manner aforesaid as is aforesaid.

## II.

Peter of Marden brings an assize of novel disseisin against William his son and complains that he has been disseised of twenty acres of land etc. William says that he has done no wrong. The assize was thereupon awarded ; and it came and said that those tenements were in the seisin of one Agnes the mother of William as her heritage, and it said that Peter married that Agnes and begat this William, and it said that Agnes died and that William entered upon a moiety of the tenements as upon his inheritance and that Peter held the other moiety according to the custom of Kent, which is that the husband shall hold a moiety of the tenements in such circumstances as long as he remains sole, but, if he marry, he shall forfeit them to the heir ; and they said that William afterwards, while he was within age, granted the tenements of which he was tenant to his father, and afterwards executed a deed in his favour, which recited that he granted, leased and confirmed to Peter his father all the tenements in such a vill which he had or might have through the death of his mother to hold for the whole term of his life ; and that subsequently Peter took a wife, and William afterwards came to the house, being of full age, and remained with his father through two years, and then ejected his father from the whole.

Disseisin.

SPIGURNEL J. In respect of the moiety of which William was seised as of his heritage, which he granted to his father and then disseised him of in defiance of his own grant, the Court gives judgment that Peter recover his seisin etc.

As to the other moiety which Peter held in accordance with the custom of Kent—

*Passeley* said :—Sir, he can recover naught, for he has nothing to rely upon save the deed which William gave him ; and that deed is worth nothing to him. For before the making of the deed and at the time of the deed the father had a customary freehold, and since the



voleit qe fraunktenement fet a lui qi avoit fraunktenement rien ne poit acrestre mes sil lui eust graunte fee et droit aliud esset mes ore avoit Pieres fraunktenement par le usage et le forfist par qey Willem entra com bien lui lust dount de tele moite ne peut il estre disseisor a ceo fust dit qe Pieres avoit fraunktenement condicionel solom le usage etc. avaunt le fet etc. mes par le fet il fust simple a tute sa vye.

SPIGURNEL pur ceo qe trove est par ceste assise qe W. fist un fet a Pieres de touz les tenementz qil avoit ou aver pout par la mort sa miere qe voleit graunt lees et confirmement a tenir a tute sa vye et la reversioun a lui et coment qil fist le fet taunt com il fust denz age il vynt a lostel et demora oue P.<sup>1</sup> ij. aunz apres ceo qil fust dage et apres ceo qe P. avoit pris femme et en taunt agrea son primer fet si agard etc. qe P. recovere sa seisine etc.

III.<sup>2</sup>

Un Piers de Merdelay porta un assise de nouel disseisine vers William son fitz et <sup>3</sup>mist en vewe et en sa pleint un mees<sup>3</sup> x. acres <sup>4</sup>de terre xv.s. de rente oue les appurtenances en B.<sup>4</sup>

*Cant.* a tort port il ceste assise qar <sup>5</sup>nous vous dioms qil ne fut<sup>5</sup> unges seisi <sup>6</sup>issint qil pout estre disseisi.<sup>6</sup>

<sup>7</sup> SPIGURNEL. fet venir lassise.<sup>7</sup>

Lassise <sup>8</sup>vint et<sup>8</sup> dit qe Piers prist une femme qi fut enherite des tenemenz en Gauilkind et de ly engendra Roger et William la femme deuia le baroun tint la moite de la terre solom les usages de Gauilkind lautre moite demoura en la garde meme cesti P. en noun de les enfauntz. Et pus un pourparlance se prist<sup>9</sup> entre P. et William issint qe Piers mettreit W.<sup>10</sup> a Loundres entre les pessoners et ly fit illoques apprentiz et issint fut fait pur quei W. granta a P. tut la terre qi ly fut descendu de part sa mere ou qi a ly pout descendre a <sup>11</sup>terme de<sup>11</sup> sa vie par le fait qe P. mettoit illoques auant et fut le fet fait a Loundres.

<sup>12</sup>Demande fut des Justices le quel age il fut adonqe.<sup>12</sup>

*Lassise.* de xv. aunz.

Pus fut enquis de quel age il pout aliener <sup>13</sup>les tenemenz<sup>13</sup> solom lusage de Gauelkind.

<sup>1</sup> son pieres. <sup>2</sup> Text of (III) from  $\delta$  collated with  $\zeta$ . <sup>3-3</sup> se pleint  
estre disseisi de  $\zeta$ . <sup>4-4</sup>  $\zeta$  omits. <sup>5-5</sup>  $\zeta$  omits. <sup>6-6</sup>  $\zeta$  omits. <sup>7-7</sup>  $\zeta$   
omits. <sup>8-8</sup>  $\zeta$  omits. <sup>9</sup> fit  $\zeta$ . <sup>10</sup>  $\zeta$  adds son fiz. <sup>11-11</sup> tote  $\zeta$ .  
<sup>12-12</sup> LA JUSTICE de quel age fut il adonk  $\zeta$ . <sup>13-13</sup>  $\zeta$  omits.

deed purports to do no more than to grant a freehold to one who already had a freehold, naught can accrue by virtue of it. It would have been different if William had granted his father the fee and right. But Peter had already the freehold by custom, and he forfeited it ; whereupon William entered, as he was fully entitled to do ; and could not, therefore, be a disseisor of that moiety. As to this it was said that before the deed Peter had a conditional freehold according to the custom etc., but that the deed gave him the fee simple for the whole of his life.

SPIGURNEL J. Seeing that it has been found by this assize that William made a deed to Peter in respect of all the tenements which he had or might have through the death of his mother, which deed purported to grant, lease and confirm a tenancy to Peter for his whole life, with reversion to himself ; and though he made such deed while he was within age yet he went to the house and remained with Peter for two years after that he was of age and after that Peter had taken a wife, and by so doing confirmed his original deed, the Court gives judgment that Peter recover his seisin etc.

### III.

One Peter of Marden brought an assize of novel disseisin against William his son, and put in view and in his plaint one messuage, ten acres of land in B. and fifteen shillings of rent, together with the appurtenances.

*Cambridge.* He brings this assize wrongfully, for we tell you that he was never seised so as to be capable of being disseised.

SPIGURNEL J. Call the assize.

The assize came and said that Peter took a wife who was inherited of gavelkind tenements and begat of her Roger and William. The wife died, and the husband held a moiety of the land in accordance with the customs of gavelkind ; and the other moiety remained in the wardship of this same Peter in the name of the children. And afterwards an agreement was made between Peter and William to the effect that Peter should put William with the fishmongers at London and apprentice him there. And so it was. And in consideration thereof William granted to Peter, for the term of his life, by a deed which Peter had produced there, made in London, all the land which had descended or might descend to him upon the death of his mother.

The Justices inquired of what age William was at that time.

*The Assize.* Fifteen years.

It was then inquired at what age he might alienate his tenements according to the custom of gavelkind.

Dit fut qe de xv. aunz.

*Lassise.* puis quant W. auoit demoure <sup>1</sup>une piece<sup>1</sup> a Loundres revynt a lostel et la pourpartie fet entre Roger et William de la moite de la terre et Roger auoit sa pourpartie<sup>2</sup> et William lessa sa pourpartie<sup>2</sup> demourer en la mayn P. son pere solom <sup>3</sup>la forme de lescrit<sup>3</sup> entre eux fait. Un an et demi apres Piers prist autre femme pur quei solom les usages de Gauekind il auoit forfet <sup>4</sup>son couenant<sup>4</sup> de la moite <sup>5</sup>qil tient solom les usages etc. furent<sup>5</sup> departi entre William et Roger <sup>6</sup>par assent de touz trois de P. et de ses ij. fitz<sup>6</sup> issint qe R.<sup>7</sup> tient sa pourpartie et la pourpartie W. demoura en la mayn Piers par iij. aunz auxi com agreant son primer fait et puis vint William et ousta Piers et prioms Sire vos discrecions.<sup>8</sup>

SPIGURNEL. si nous agardoms disseisine a <sup>9</sup>com bien damages.<sup>9</sup>

*Lassise.* a ij. marz.

SPIGURNEL. <sup>6</sup>entre nous partiez<sup>6</sup> attendez vos jugements<sup>10</sup> qar nous voloms estre aulse.<sup>11</sup>

et fut le jugement delaie pour <sup>12</sup>cele partie qil<sup>12</sup> auoit forfet<sup>13</sup> etc. par les esposailles pur ceo qe al heure qe lescrit fut fait P. <sup>14</sup>tenant du<sup>14</sup> franctenement <sup>15</sup>dont fet a saver si celi qe nul franktenement avoit porait fraunktenement tailler a celi qe avoit fraunktenement<sup>15</sup> et son franctenement en autre manere<sup>16</sup> chaunge qe poit estre forfet par les esposailles solom les usages.

<sup>6</sup>Puis a lendemene des almes<sup>6</sup> SPIGURNEL <sup>17</sup>dona le jugement en ceste forme<sup>17</sup>: Pur ceo qe W. en plein age esteant et agreant son fet suffrit Piers son pere apres la forfeiture fet ut supra estre seisi par iij. aunz si agarde la court qe P. recoure seisine <sup>18</sup>et W. en la mercie.<sup>18</sup>

#### IV.<sup>19</sup>

Pyere de Mordale porta un assise de novel disseisine vers W. le fitz P. de M. et se pleynt estre dissaisi de la moyte dun mees et x. acres de terre etc.

*Caunt.* P. fut vnqes seisi issi qil pout estre disseisi.

*Lassise* demande disoient ces evidences.

*Stonore.* pur Piere dit qe cely W. ly lessa le tenement a tote sa vie et dit qe cesti Pere auoit une femme mere mesme cesti W. et Roger

<sup>1-1</sup> un petit ζ.      <sup>2</sup> moite ζ.      <sup>3-3</sup> le covenant ζ.      <sup>4-4</sup> sa tenanz ζ.  
<sup>6-5</sup> dont cel moite qe Piers tient fut ζ.      <sup>6-5</sup> ζ omits.      <sup>7</sup> Piers ζ.      <sup>8</sup> evidenz  
<sup>9-9</sup> qi le damage ζ.      <sup>10</sup> jours ζ.      <sup>10-11</sup> ζ omits.      <sup>12-12</sup> ceo qe celi ζ.  
<sup>13</sup> ζ adds solom les usages.      <sup>14-14</sup> entra cel ζ.      <sup>15-15</sup> from ζ.      <sup>16</sup> nature ζ.  
<sup>17-17</sup> ζ omits.      <sup>18-18</sup> etc. ζ.      ζ adds the judgment in Latin, as given in version above.      <sup>19</sup> Text of (IV) from γγ.



It was said at the age of fifteen years.

*The Assize.* Afterwards, when William had sojourned for a while in London, he returned to the house, and an apportionment of the moiety was made between Roger and William; and Roger took his share, but William allowed his share to remain in the hand of Peter his father in accordance with the tenour of the writing made between them. A year and a half afterwards Peter took another wife, and thereby, according to the customs of gavelkind, forfeited his right to hold the moiety which he held by the customs etc.; and it was divided between William and Roger with the assent of all three, of Peter and his two sons. So Roger took his share, and William's share remained in Peter's hand for three years in accordance with the original deed, and then William came and ejected Peter; and, Sir, we pray your assistance.

SPIGURNEL J. If we rule it a disseisin, at what do you assess the damages?

*The Assize.* At two marks.

SPIGURNEL J. The Court is not agreed. Await your judgments, for we wish to advise ourselves.

And there was a delay in giving judgment in favour of the party who by his marriage had forfeited etc.; for, at the time when the writing was made, he, Peter, was tenant of the freehold, and it was a matter for question whether one who had not the freehold could assign a freehold to one who had a freehold, or in any way change the nature of his freehold, which was forfeitable upon marriage according to the custom.

Afterwards, upon the morrow of All Souls, SPIGURNEL J. gave judgment in form following:—Seeing that William, being of full age, did, in accordance with his agreement, acquiesce in his father's seisin for three years after forfeiture etc. *as above* the Court gives judgment that Peter recover his seisin and that William be in mercy.

#### IV.

Peter of Marden brought an assize of novel disseisin against William the son of Peter of Marden and complained of being disseised of the moiety of a messuage and ten acres of land etc.

Novel  
disseisin.

*Cambridge.* Peter was never seised so as to be capable of being disseised.

The assize is called and the parties plead before it.

*Stonore*, on behalf of Peter, says that this William granted him the tenement for his whole life, and says that this Peter had a wife that was mother of this same William and of Roger his brother. This wife died

son frere cel femme morust et Pere tynt la moyte de lenter saver xx. acres de tere apres le deces la femme par les vsages de gauelgende et lautre moyte fut partie entre le deux freres issint qe cely W. demora ouesque son piere iesques ataunt qil acorderent entre eux qe son piere luy freit aprentis entre les peissoners de loundres et William luy enfefereit de tut sa tere qe luy descendit par succession apres la mort sa mere a tener tut sa vie par tiel escrit dedi concessi omnia tenementa mea que michi acciderint nomine hereditatis ad totam vitam ipsius Petri Pere ly fit aprentis et William ly lessa quant qil auoyt etc.

*Cant.* Pere nauoit rien forsque en noun de garde en droit de la moyte qe affereit a W. par succession qel William fut a cel temps deynz age saver denz xv. aunz.

*Lassise* Pere auoit une femme qi fut enherite de ceux tenementz de qi il engendra W. et R. la femme morust Pere tynt la moyte par Curteysie solom les usages de Gauelkende pus apres quant William auoit demore ou son piere tantque il fut de xv. aunz il ly fit aprentice et il ly fesoit un escrit dount il enparlerent pus pere prist femme pur quay sa tenance fut forfaite par usage de Gauelkende vynt Roger le pusne frere et prist sa purpartie saver x. acres vynt W. et osta Piere de les autres x. acres.

SPIGURNEL le quel fut lescript fet deuant qe Pere prist autre femme ou apres.

*Lassise* deuaut.

SPIGURNEL de quel age fut il quant il lessa les tenementz.

*Lassise* de xv. aunz.

SPIGURNEL. cum bien fut Peris seisi et demora apres le fet.

*Lassise* ij. aunz.

SPIGURNEL. quant W. auoit fet cel escript liuera il point la seisine a son piere.

*Lassise* ceo ne savoms pas mes quant W. vynt a laustel il demora ouesque son piere et se agrea tut son temps tauntque son piere prist autre femme et apres ceo il osta son piere.

*Cant.* a meyns quant a la moyte qe Pere tynt par Curteysie etc. qe acrust a W. par la forfeiture W. ne ly pout granter franctenement qil mesme nauoit rien en le franctenement et par consequent en ceste

and Peter held a moiety of the whole, that is to say, twenty acres of land, after the death of his wife, in accordance with the customs of gavelkind ; and the other moiety was divided between the two brothers, so that William abode with his father until that it was agreed between them that his father should make him an apprentice with the fish-mongers of London ; and William enfeoffed him of all his land which had descended to him by succession upon his mother's death, to hold for the term of his life, by a deed in the form following :—‘ I have given and granted all my tenements which accrued to me by way of inheritance for the whole lifetime of the said Peter.’ Peter apprenticed him and William granted to him all the estate he had etc.

*Cambridge.* Peter had naught, save as guardian, in respect of the moiety which accrued to William by succession ; and that same William was at that time within age, to wit, within fifteen years.

*The Assize.* Peter had a wife who inherited these tenements, and of her he begat William and Roger. The wife died. Peter held the moiety by courtesy according to the custom of gavelkind. Afterwards, when William had abode with his father until that he was fifteen years old, his father apprenticed him, and William made him the writing of which they spoke. Then Peter took a wife, and his tenancy was thereby forfeited according to the custom of gavelkind. Roger, the younger brother, came and took his share, to wit, ten acres. William came and ejected Peter from the other ten acres.

SPIGURNEL J. Was the writing made before or after that Peter took another wife ?

*The Assize.* Before.

SPIGURNEL J. Of what age was William when he granted the tenements ?

*The Assize.* Fifteen years.

SPIGURNEL J. How long after the deed was Peter seised and in possession ?

*The Assize.* Two years.

SPIGURNEL J. When William had executed this deed, did he not deliver seisin to his father ?

*The Assize.* That we do not know ; but when William came to the house he lived with his father and was in agreement with him all the time until that his father took another wife and after that he ejected his father.

*Cambridge.* William could not, at any rate, grant a freehold in the moiety which Peter held by courtesy etc. and which [subsequently] accrued to William by Peter's forfeiture of it, for he had nothing in the freehold ; and so it follows that in respect of this portion, in which



purpartie ou il nauoit nul franctenement ne put il franctenement grantier ne franctenement par son fet vester en droit de altre partie qe ly descendit inmediatelement apres la mort sa mere il nauoit unques liure de possession sicom vous trouez par assise pur quei en droit de liure de seysine lescript est voyde sil voet dire qe lescrit afferme son estat par my la possession precedent la possession et le droit de ceste purpartie fut nule quant a ly qe cest possession qil auoit en noun de garde fut la possession lenfant issi ne poet il dire qe lescrit ne fut mye fait en sa possession.

Pus *Toudebi* pria conge etc.

Judicium.

SPIGURNEL dona les Jugemens en ceste forme pur ceo qe W. de pleyne age esteaunt etc. et agreaunt son fait soeffrant P. son piere apres la forfeiture faite demorer etc. pur ij. aunz sy agarda la court qe P. recoure sa seysine par vewe de jurons et William en la mercy.<sup>1</sup>

### V.<sup>2</sup>

Pers de Merdale prist a feme une Angnes qi fut enherite de certain tenemenz auoit issue Willem et Roger. Angnes morust. Pers tint la meite de tenemenz par vsage de Kent a tote sa vie sil ne mariast etc. et lautre meite tint com gardien lez enfauns Willem qant il fut passe lage de xv. ans de plein age par usage etc. il fit en la seysine son pere un tel fet. Sachent tote gent etc. qe ieo ai lesse grante et confirme a Pers mon pere tote lez terres qe ieo ai ou auer puse par succession de heritage apres la mort Angnes ma mere a tote<sup>3</sup> la vie Pers mon pere. Ceo fet fit Willem a Londres et en Kent le coniseit en presence de bone gent. Un an apres Pers prist feme pur quei ceo qil tint par usage de Kent la meite fut forfeit etc. Pers se tint enz par la suffrance de fiz un an et demi apres sa feme espose et puis vindrent Willem et Rogger et ly osterunt de lenter purquei il porta lassise de novel disseysine par laquelle tot le cas avandit fut troue pur quei fet a demander si Pers recouera la quarte partie de lenter dont Willem fut seisi al tens de la confeccion de lescrit tantum dite quarte ou la parte de la meite de ceo qil tent par usage <sup>4</sup>de Kent<sup>5</sup> ieques a tant qil forfit com avant est dit et issit sunt a jugement.

SPRG. de la quarte partie dont il fut seisi de franctenement il semble qe nule doute est qar Pers fut en possession et le fet fet en sa seysine. Mes de lautre quarte parte si Pers auoit franctenement a

<sup>1</sup> Here follows the judgment in Latin as in version (I) above.    <sup>2</sup> Text of (V) from  $\eta$  collated with  $\theta$ .    <sup>3</sup> terme de  $\theta$ .    <sup>4-5</sup> Supplied from  $\theta$ .

he had no freehold, he could neither grant a freehold, nor, by his deed, vest a freehold. As to the other portion which descended to William immediately after his mother's death, Peter never had seisin delivered to him of it, as the assize has found ; and therefore, in the absence of delivery of seisin, the writing is void. If he wants to allege that the writing affirms his estate by reason of possession precedent, [the answer is that] his possession and his right to this share were null, for the only possession he had was as guardian and was the infant's possession. And so he cannot say that the writing was made during his possession.

*Toudeby* afterwards prayed leave etc.

SPIGURNEL J. gave judgment after this fashion :—Seeing that William, being of full age etc., confirmed his deed by allowing Peter his father to remain for two years after forfeiture committed etc. the Court gives judgment that Peter recover his seisin by view of the jurors and that William be in mercy. Judgment.

#### V.

Peter of Marden took to wife one Agnes who was inherited of certain tenements [and] had issue William and Roger. Agnes died. Peter held one moiety of the tenements by the custom of Kent for his whole life, provided that he did not marry etc., and he held the other moiety as guardian of the infants. When William was past the age of fifteen years and was of full age according to the custom etc. he made, during the seisin of his father, a deed in the following terms :—‘ Let all folk know etc. that I have leased, granted and confirmed to Peter my father for the whole life of Peter my father all the lands which I have or may have by succession to my inheritance upon the death of Agnes my mother.’ William made this deed in London, and he acknowledged it in Kent in the presence of law-worthy folk. A year later Peter took a wife, and consequently the moiety which he held by the custom of Kent became forfeit etc. Peter continued in possession, with the acquiescence of his son, for a year and a half after he had married his wife, and then William and Roger came and ejected him from the whole inheritance ; wherefore he brought the assize of novel disseisin ; which assize found all the facts to be as above. The question then was whether Peter could recover only the fourth part of the whole of which William was seised at the time of the execution of the writing aforesaid, or the said fourth part of the half of what he, Peter, held by the custom of Kent until he forfeited it as is aforesaid ; and so they are at judgment.

SPIGURNEL J. As to the fourth part of which William was seised in freehold, there seems no doubt that Peter was in possession and that the deed was made during his seisin. But, as to the other fourth part,

tens de fet fet et defere ly franctenement en son franctenement <sup>1</sup>seroit mervaille<sup>2</sup> mes de la quarte partie dont il fut seisi de franctenement com de reson de sa pourpartie de ceo put Willem fere estat pur quei agarde la court qe Pers recouere et qant a remenant attendez vos iugements.

SPIC. <sup>3</sup>ad alium diem<sup>4</sup> troue est par cete assise qe <sup>5</sup>de lautre quart partie<sup>6</sup> Pers naueit pas franctenement pur enz condicionel sauer sil prist feme etc. et par lescriit qe Willem fit en sa seisine il ly fit en sa seisine [*sic*] il ly granta a terme de sa vie simplement quel estat Willem accepta par ij. ans apres qe Pers prist feme pur quei agarde etc. qe Pers recouere etc.

### FRESINGEHEYE v. DE COLUMBARIIS.<sup>7</sup>

#### Note from the Eyre Roll.

The issue for the assize was :—Si Alice que fuit uxor Iohannis de Columbariis Ricardus filius Ricardi de Wodetone Estrilda que fuit uxor Ricardi de Wedetone et Stephanus Fresingeheyne iniuste etc. disseisiuerunt Philippum de Fresingeheyne de libero tenemento suo in Tenterdenne et Ebbeneye et Wodecherch post primam etc.

Alice appeared by attorney and Richard in person. The others did not appear, but one Richard of Chelesfeld answered on their behalf “tanquam eorum Balliuus.”

Assise de nouel disseisine de reserue ou les tenemenz furent lessetz par un Endenture fete a tenir des chefs seignourages dil fee et fut chalenge pur ceo qe par tiele alienacioun rien ne poeit estre reserue et auxint chalenge pur ceo qe le paie serreit fet en autre counte qe la ou tenemenz furent et al drein le bref abatu pur ceo qil y auoit un tenaunt nient nome en le bref.

Disseisine.

Philippe<sup>8</sup> de Frisingee<sup>9</sup> porte assise de novel disseisine vers Alice qi fust la femme Jon le Columbers Richard le fitz Richard de Wodetone<sup>10</sup> et autres nomez<sup>11</sup> en le bref<sup>12</sup> et se pleint estre <sup>13</sup>disseisi de son franctenement saver<sup>14</sup> de v.<sup>15</sup> marcs de rente en B.<sup>16</sup>

*Hertepol.* les tenementz mis en vewe ne sount de son fee ne de sa seignurie jugement si saunz especialte assise deyve estre.

*Stonore* mist avant un fet endente qe voleit qe mesme cesti Philipe avoit done et graunte certaines tenementz a Richard de Wodetone<sup>17</sup> pierre Richard qi ore respond com tenant <sup>18</sup>a aver et a tenir<sup>19</sup> a ly et ses

<sup>1-2</sup> Supplied from  $\theta$ ;  $\eta$  omits.

<sup>3-4</sup> added from  $\theta$ .

<sup>5-6</sup> Supplied from  $\theta$ .

<sup>7</sup> Reported by  $\alpha$ ,  $\alpha\alpha$ ,  $\beta$ ,  $\gamma$ ,  $\delta$ ,  $\epsilon$  and  $\zeta$ . Names of the parties from E.R. Text from  $\gamma$  collated with  $\alpha$ ,  $\beta$ ,  $\delta$ ,  $\epsilon$ , and  $\zeta$ . Head note from  $\alpha$ .

<sup>8</sup> Phelips  $\alpha$ .

<sup>9</sup> Fremshai  $\alpha$ ; Sursinhey  $\beta$ ; F.  $\delta$ ; Frisingfeld  $\zeta$ .

<sup>10</sup> Godtone  $\alpha$ ; Godcom  $\beta$ ;

W.  $\delta$ . <sup>11</sup> added from  $\delta$ . <sup>12-13</sup>  $\zeta$  omits. <sup>14-15</sup> from  $\alpha$ ,  $\beta$ ,  $\delta$ ,  $\epsilon$ ; etc.  $\gamma$ .

<sup>16</sup> xv.  $\alpha$ ,  $\beta$ ; c.  $\delta$ . <sup>17</sup> W.  $\alpha$ ,  $\beta$ .

<sup>18</sup> W.  $\alpha$ ,  $\beta$ ,  $\delta$ ; Wodington  $\zeta$ . <sup>19-20</sup> from  $\epsilon$ .



if Peter had a freehold in it at the time when the deed was made, it would have been a strange proceeding to give him a freehold in what was his freehold. But the fourth part of which William was seised in freehold in virtue of his share he could grant ; wherefore the Court gives judgment that Peter recover it. And, as to the rest, await your judgment.

SPIGURNEL J. Upon another day. It has been found by this assize that Peter had not an absolute freehold in the other fourth part, but a conditional one ; that is to say that if he took a wife etc. and William, by the writing which he gave Peter during his seisin, granted him an unconditional life estate, and acquiesced in that estate for two years after that Peter had taken a wife. Therefore the Court gives judgment that Peter recover etc.

### FRITTENDEN v. CULVERHOUSE.

#### Note from the Eyre Roll—continued.

The plea of Richard the son of Richard was :—quod non debet ei unde ad hoc breue respondere. Dicit enim quod predictus Philippus queritur se disseisiri de predictu redditu etc. Dicit quod quidam Osbertus de Fresingheye tenet terciam partem predictorum tenementorum oneratorum etc. qui quidem Osbertus non nominatur in breui et petit iudicium de breue.

Philip could not deny Richard's allegation ; so judgment was given that Alice and the others go away *sine die*, and that Philip take naught by his writ, but be in mercy for his false claim.

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Assize of novel disseisin of rent reserved. The tenements were granted by an indenture reciting that they were to be held of the chief lords of the fee. Objection was taken to an assize firstly upon the ground that nothing could be reserved under an alienation of the fee ; and, secondly, because such assize would be taken in a county other than that wherein the tenements lay ; and ultimately the writ was abated because one of the tenants was not named in it.

Philip of Frittenden brings an assize of novel disseisin against Alice that was wife of John Culverhouse, Richard the son of Richard of Wootton, and others named in the writ, and he complains that he has been disseised of his freehold, to wit, of five marks of rent in B. Disseisin.

*Hartlepool.* The tenements put in view are not of his fee nor of his lordship. Judgment whether, without specialty, the assize should come.

*Stonore* tendered an indented deed which recited that this same Philip had given and granted certain tenements to Richard of Wootton, the father of Richard who now answers as tenant, to have and to hold

heirs <sup>1a</sup> a touz jours fesaunt pur ly <sup>2et</sup> pur ses heirs <sup>3</sup> as chiefs seignurs <sup>4du</sup> fe<sup>5</sup> les services dewes <sup>6e</sup> costomes<sup>7</sup> et rendaunt <sup>8de</sup> meymes cels tenementz<sup>9</sup> a ly a tute sa vye checun an v.<sup>10</sup> marcs a B.<sup>11</sup> en le counte Dessex<sup>12</sup> des geux<sup>13</sup> il fust seisi et il vint et distreint pur la dite rente ariere <sup>14</sup>Richard le fitz Richard<sup>15</sup> et les autres firent la deliveraunce et issi <sup>16</sup>est il disseisor<sup>17</sup> et prioms lassise.

*Hertepol.* assise ne doit estre qar le fet que il met avant veut qil dona les tenementz a Richard de Wodetone nostre pierre <sup>18e</sup> a ses heirs a tenir des chefs seignurs<sup>19</sup> etc. <sup>20et</sup> par cel doun se estraungi tut del fee issint qe il ne pout apres cel doun rien en les tenementz avantdit a ly reserver<sup>21</sup> par quei nous demandoms<sup>22</sup> jugement etc.

SPIGURNEL. le fet veut qe P. vous<sup>23</sup> dona les tenementz <sup>24a</sup> vous et a vos heirs en<sup>25</sup> rendant a lui <sup>26</sup>tant par an a tute sa vye<sup>27</sup> et vous receutes les tenementz ove la charge par qey respondez.

HERVI <sup>28ad</sup> idem<sup>28</sup> vous averez <sup>29</sup>tiele fyn<sup>30</sup> qe vous conicez les tenementz contenuz en le bref estre le droit <sup>31un</sup> B.<sup>31</sup> et ceus lui rendez en ceste courte<sup>32</sup> a aver et tenir<sup>33</sup> a ly et a ses heirs a touz jours et rendant a <sup>34</sup>vous a tute vostre vye taunt <sup>35</sup>par an<sup>36</sup> par qey etc.<sup>37</sup>

*Pas.* le fet qe ils mettent avant<sup>38</sup> veut qe <sup>39</sup>la rente doit estre<sup>39</sup> paye en le countee de Sussex et si nous vosisoms averrer qe la rente feust<sup>40</sup> pleinement paye jour de la prise vous tiel<sup>41</sup> peusez nient enquerir<sup>42</sup> par gentz de cel countee par qey <sup>43</sup>jugement de cestui bref.<sup>43</sup>

HERVI nous nenqueroms ja de la paie mes sil soit disseisi <sup>44</sup>cum il se pleint<sup>44</sup> ou noun pur ceo qe le fraunktenement dount il se pleint est en ceo countee<sup>45</sup> etc.

*Westcote* mes<sup>46</sup> si la rente ne fust ariere le jour <sup>47de</sup> la prise<sup>48</sup> tut usoms nous fet la deliveraunce ceo neust mie este <sup>49</sup>cause de<sup>49</sup> disseisine dount si nous vosisoms averrer <sup>50</sup>le paiement<sup>50</sup> le qel <sup>51</sup>doit estre fet en le conte<sup>51</sup> de Sussex nentendoms mie qe vous le peusez enquerir par gentz <sup>52de</sup> ceo countee <sup>53mes</sup> <sup>54</sup>deust estre enqueris<sup>54</sup> par gentz del countee<sup>55</sup> ou le paiement <sup>56</sup>deust estre<sup>56</sup> fet <sup>57</sup>par quei etc.<sup>58</sup>

<sup>1-3</sup> a, β omit.      <sup>2-3</sup> from ε; etc. γ.      <sup>4-5</sup> from ε; etc. γ.      <sup>6-7</sup> from ζ; etc. γ.      <sup>8-9</sup> from ε.      <sup>10</sup> xv. a, β; c. δ.      <sup>11</sup> W. a, β; un certain lieu qi est ζ.      <sup>12</sup> de Sussex a, β, δ, ε, ζ.      <sup>13</sup> a, β add deniers.      <sup>14-15</sup> from ε. <sup>16-17</sup> disseisi a, β; seisi ζ.      <sup>18-19</sup> from ε.      <sup>20-21</sup> δ omits.      <sup>21</sup> refermer a. <sup>22</sup> from ε.      <sup>23</sup> a, β, ε, ζ omit.      <sup>24-25</sup> from ε.      <sup>26-27</sup> from ε; etc. γ. <sup>28-29</sup> a, β omit.      <sup>29</sup> a, β, δ, ε, ζ add un fyn en la curt le Roi.      <sup>29-30</sup> δ, ε, ζ omit; en cele manere a, β.      <sup>30-35</sup> δ omits.      <sup>31-31</sup> Richard β.      <sup>32-35</sup> from a, β, ε, ζ. <sup>33</sup> a, β add des chiefs seignourages de fee.      <sup>34-36</sup> a terme de sa vie par an tant etc. ζ. <sup>35-37</sup> ou en fee. Homme lad veu. a, β.      <sup>38</sup> a, β add est lour fet demene et. <sup>39-39</sup> les xv. mars seient payez a, β.      <sup>40</sup> estre a, β.      <sup>41</sup> ne a, β, ζ; nele δ. <sup>41-42</sup> poez mie enquere a; pusiez my enquere β.      <sup>43-43</sup> from a, β; etc. γ. <sup>44-44</sup> from ε.      <sup>45</sup> δ, ζ add pur quei.      <sup>46</sup> a, β omit.      <sup>47-48</sup> qil fist la destresse δ, ζ.      <sup>48</sup> destresse a, β.      <sup>49-49</sup> a, β omit.      <sup>50-50</sup> ut supra a, β, δ, ζ. <sup>51-51</sup> averement serreit de gens a, β.      <sup>52-53</sup> δ omits.      <sup>53-37</sup> a, β omit. <sup>54-54</sup> covendrez enquere ε, ζ.      <sup>56-56</sup> fut ζ.      <sup>57-58</sup> from ε.

to himself and his heirs for ever, rendering by himself and his heirs to the chief lords of the fee the due and customary services and rendering to them at B. in the county of Essex from these same tenements the sum of five marks every year of his whole life. Richard being seised of these tenements, Philip came and distrained for arrears of the said rent. Richard the son of Richard and the others replevied the distress, and so they became disseisors, and we pray the assize.

*Hartlepool.* Assize ought not to be, for the deed which he tenders recites that he gave the tenements to Richard of Wootton our father and to his heirs to hold of the chief lords etc. ; and by this deed he alienated the whole of the fee to the effect that, after this grant, he can reserve naught in the tenements aforesaid to himself. Wherefore we demand judgment etc.

SPIGURNEL J. The deed alleges that Philip gave the tenements to you and your heirs upon consideration of your paying him so much a year during his whole life, and you received the tenements so charged ; therefore answer.

STAUNTON J. *ad idem.* You have a fine to the effect that you acknowledge the tenements named in the writ to be the right of B. and that you surrender them to him in this Court to have and to hold to him and his heirs for ever, they paying to you so much a year during your whole life. Wherefore etc.

*Passeley.* The deed which they tender says that the rent must be paid in the county of Sussex, and if we want to aver that the rent was fully paid on the day of the distress you cannot enquire of such a matter by a jury of this county. Wherefore judgment of this writ.

STAUNTON J. We cannot inquire here as to the payment, but [we can inquire] as to whether or not he was disseised as he complains, for the freehold in respect of which he complains is within this county etc.

*Westcote.* But if the rent were not in arrear on the day of the distress, then, even though we did replevy, that would be no act of disseisin. And so, if we want to aver the payment, which had to be made within the county of Sussex, we submit that you cannot inquire of it through a jury of this county ; but it must be inquired of through a jury of the county within which the payment had to be made. Wherefore etc.



<sup>1</sup>SPIGURNEL ne vous sovent il dune assise de novel disseisine qe le priour de Dunstaple porta vers labbe de Tame<sup>2</sup> et demanda x.<sup>3</sup> li. de rente <sup>4</sup>des certains tenementz<sup>5</sup> en le countee de oxon<sup>6</sup> a paier les a Donestaple en le countee de Bedeford et pur ceo qe le fraunktenement feust en le countee de oxon fust agarde par tut le conseyl le Roi qe le bref fust bon <sup>7</sup>en le countee de Oxon<sup>8</sup> par qey respondez.

*Hertepol.*<sup>9</sup> Sire <sup>10</sup>nous vous dioms qe<sup>10</sup> un Osbert<sup>11</sup> tient la tierce partie des tenementz dount ceste rente est issaunt<sup>12</sup> nient nome en le<sup>13</sup> bref jugement de bref.

et les autres nel poient dedire <sup>14</sup>par qey il ne prist rien par son bref<sup>15</sup> etc.

### FRISINGHEYE v. FRISINGHEYE.<sup>16</sup>

#### I.<sup>17</sup>

Assisa venit recognitura si Alicia que fuit uxor Iohannis de Columbariis et Ricardus filius Ricardi de Wodedone Estilda<sup>18</sup> que fuit uxor Ricardi de Wodedone <sup>19</sup>Stephanus de Frisingheye et Osbertus<sup>20</sup> de Frisingheye et Isabella<sup>21</sup> uxor eius iniuste etc. disseisiuerunt Philippum de Frisingeeye de libero tenemento suo in Tenterdenne Ebbeneye et Wodechirche post primam etc. <sup>22</sup>et unde queritur quod disseisiuerunt eum de <sup>23</sup>vi. li. xiii. s. et iiij. d. redditus cum pertinentiis<sup>23</sup> etc.<sup>24</sup> et idem Philippus ad euidenciam<sup>25</sup> liberi tenementi etc. profert partem cuiusdam scripti indentati que testatur quod idem <sup>26</sup>Philippus concessit et<sup>26</sup> confirmavit predicto<sup>27</sup> Ricardo patri predicti Ricardi omnes terras et tenementa sua que habuit in predictis villis et que tenementa quondam fuerunt Isabelle de Fresingeye matris sue ut in mesagiis terris boscis pratis et <sup>28</sup>omnibus aliis<sup>28</sup> pertinentiis tenenda eidem Ricardo hereditibus<sup>29</sup> et assignatis suis de <sup>30</sup>capitali domino<sup>30</sup> feodi per seruicia inde

<sup>1</sup> from this point to end  $\delta$ , collated with  $\zeta$ , reads:—*Hert.* Jugement du bref "qar nous vous dioms" qil y ad un B. qi recouerist vers meme cesti R. le fitz R. un carucee de terre par assise de mordancestre laquele carucee de terre est parcela <sup>b</sup> de memela terre qil dit estre charge<sup>b</sup> de ceste rente nient nome en le bref jugement du bref. Et "alius non potuit hoc dedicare": ideo cassatur breve.

<sup>2</sup> Thame  $\epsilon$ . <sup>3</sup> xl.  $\epsilon$ . <sup>4-5</sup>  $\epsilon$  omits. <sup>6</sup> Oxenforde a,  $\beta$ . <sup>7-8</sup> from a,  $\beta$  and  $\epsilon$ . <sup>9</sup> HERVI  $\beta$ . <sup>10-10</sup> from a,  $\beta$  and  $\epsilon$ . <sup>11</sup> Thomas  $\epsilon$ . <sup>12</sup> a,  $\beta$  add qe les recouera par un assise. <sup>13</sup> cestui a; ceti  $\beta$ . <sup>14-15</sup> Ideo nichil capiat per breue a; ideo consideratum quod nichil capiat per breue  $\beta$ ;  $\epsilon$  omits par son bref.

<sup>16</sup> Philip de Frisingeeye's previously reported action having been dismissed through the non-joinder of Osbert de Frisingeeye as a co-defendant, Philip now purchases a fresh writ, naming Osbert as one of the defendants. Reported by a,  $\gamma$ ,  $\delta$ ,  $\epsilon$ ,  $\eta$  and  $\theta$ . <sup>17</sup> Text of (I) from  $\gamma$ , collated with  $\delta$ ,  $\epsilon$ ,  $\eta$ ,  $\theta$  and E.R. <sup>18</sup> Estrilda  $\eta$ ,  $\theta$  and E.R. <sup>19-21</sup> P. de F. a, A.  $\delta$ . <sup>20</sup> from  $\eta$ ,  $\theta$  and E.R.; Orbo  $\gamma$ ; Osbernus  $\epsilon$ . <sup>22-24</sup>  $\theta$  omits. <sup>23-23</sup> Sex libratibus redditus unde portat  $\eta$ .

<sup>25</sup> E.R. adds tituli. <sup>26-26</sup>  $\delta$  omits. <sup>27</sup> Eidem  $\eta$ . <sup>28-28</sup> pasturis etc.  $\delta$ . <sup>29</sup>  $\delta$  omits. <sup>30-30</sup> capitalibus dominis  $\eta$ .

<sup>a-</sup>  $\zeta$  omits.

<sup>b-b</sup> des tenementz chargez  $\zeta$ .

<sup>c-c</sup> il ne put ceo dedire  $\zeta$ .

SPIGURNEL J. Do you not remember an assize of novel disseisin brought by the Prior of Dunstable against the Abbot of Thame where the Prior demanded ten pounds of rent from certain tenements within the county of Oxford payable at Dunstable in the county of Bedford, and because the freehold was in the county of Oxford all the King's council ruled that the writ was good in the county of Oxford? Wherefore answer.

*Hartlepool.* Sir, we tell you that one Osbert holds the third part of the tenements from which this rent issues, and he is not named in the writ. Judgment of the writ.

And the other side could not deny this. Therefore the complainant took naught by his writ.

### FRITTENDEN *v.* FRITTENDEN.

#### I.

The assize came to recognise whether Alice that was the wife of John Culverhouse and Richard the son of Richard of Wootton, Estrilda that was wife of Richard of Wootton, Stephen of Frittenden, and Osbert of Frittenden and Isabel his wife unjustly etc. disseised Philip of Frittenden of his freehold in Tenterden, Ebony and Woodchurch after the first etc., in respect of which he complains that they disseised him of £6 13s. 4d. of rent together with the appurtenances etc.; and the same Philip tenders in proof of his freehold part of an indented writing which testifies that the same Philip granted and confirmed to the aforesaid Richard father of the aforesaid Richard all his lands and tenements which he had in the aforesaid villis, which tenements formerly belonged to Isabel of Frittenden his mother, consisting of messuages, lands, woods, meadows and all other appurtenances, to hold to the same Richard, his heirs and assigns, of the chief lord of the fee by the services owed therefrom, for

debita<sup>1</sup> imperpetuum<sup>2</sup> reddendo inde annuatim eidem Philippo ad terminum vite ipsius<sup>3</sup> Philippi 4vi. li. xiiij. s. et iiij. d.<sup>4</sup> percipiendos in capitali mesagio ipsius Philippi in <sup>5</sup>Gestlyng in comitatu Sussexie<sup>5</sup> videlicet <sup>6</sup>mediam<sup>7</sup> in<sup>8</sup> festo<sup>9</sup> Apostolorum Philippi et Iacobi et aliam mediam ad festum sancti Michaelis<sup>9</sup> etc.

Et Ricardus filius Ricardi infra etatem existens venit et alii non venerunt<sup>10</sup> sed<sup>11</sup> quidam Iohannes Priket respondit<sup>12</sup> pro eis tamquam eorum balliuus et pro predicta Alicia dicit quod predictus Ricardus pater predicti Ricardi tenuit tenementa sua in predictis villis de ipsa Alicia post <sup>13</sup>cuius mortem ipsa<sup>13</sup> tamquam capitalis domina<sup>14</sup> etc. seisiri fecit predicta tenementa ratione minoris etatis predicti Ricardi filii Ricardi etc. et postea reddidit eadem tenementa predicto Ricardo filio et heredi etc. <sup>15</sup>absque aliqua disseisina seu iniuria in hac parte facienda etc.<sup>15</sup> et pro predicta Estilda dicit quod ipsa<sup>16</sup> habet accionem petendi dotem de predictis tenementis ex dotacione<sup>17</sup> predicti Ricardi <sup>18</sup>de Wodedone<sup>19</sup> quondam viri sui etc. nec aliquid<sup>20</sup> aliud clamat in eisdem<sup>21</sup> nec aliquam iniuriam seu disseisinam inde fecit Et pro predicto Stephano dicit quod idem Stephanus tamquam balliuus predictae Alicie post mortem predicti Ricardi patris etc. seisivit predicta tenementa nomine domine sue etc. <sup>22</sup>absque aliqua disseisina inde facienda<sup>23</sup> etc. Et pro predicto Osberto tamquam tenente de tercia parte predictorum tenementorum positorum<sup>24</sup> in visu etc. dicit quod predicta tenementa quondam fuerunt in seisina predictae Isabelle de Frisingeye matris ipsius<sup>25</sup> Osberti et predictorum Philippi et Ricardi<sup>26</sup> cuius heredes ipsi sunt que inde obiit seisita in dominico suo ut de feodo post cuius mortem ipsi intrauerunt in predictis tenementis ut filii et heredes <sup>27</sup>eo quod<sup>28</sup> tenementa sunt partibilia et inde fuerunt seisiti in communi etc.<sup>29</sup> et postea predicti<sup>30</sup> Philippus et Ricardus <sup>31</sup>pater etc.<sup>31</sup> ipsum<sup>32</sup> Osbertum a proparte sua amouuerunt per quod idem Osbertus coram R. de<sup>33</sup> Brabasoun et sociis suis iusticiariis domini regis <sup>34</sup>E. patris domini regis<sup>34</sup> nunc ad diuersas transgressiones audiendum<sup>35</sup> et terminandum<sup>36</sup> assignatis apud Maydenston<sup>37</sup> arramauit quamdam assisam noue disseisine versus predictum Ricardum <sup>38</sup>patrem etc. et<sup>38</sup> per assisam illam recuperauit predictam<sup>39</sup> terciam partem exoneratam de predicto reddito sicut<sup>40</sup> predicta Isabella

<sup>1</sup>  $\delta$  adds et consueta.      <sup>2</sup>  $\eta$  omits.      <sup>3</sup> eiusdem  $\eta$ .      <sup>4-4</sup> sex libras  $\eta$ .  
<sup>5-5</sup> C.  $\eta$ .      <sup>6-8</sup> in eodem  $\delta$ .      <sup>7</sup> medietatem  $\epsilon$ ,  $\eta$ ,  $\theta$ , E.R.      <sup>9-9</sup>  $\eta$  omits.  
<sup>10</sup> veniunt  $\eta$ .      <sup>11</sup> sanz  $\theta$ .      <sup>12</sup> respondet  $\eta$ , E.R.      <sup>13-13</sup> mortem ipsam  $\delta$ .  
<sup>14</sup> dominus  $\eta$ .      <sup>15-15</sup>  $\eta$  omits.      <sup>16</sup> illa  $\eta$ ,  $\theta$ .      <sup>17</sup> donacione  $\theta$ .  
<sup>18-19</sup> de Godentone  $\eta$ ,  $\theta$ ; E.R. omits.      <sup>20</sup> from  $\delta$  and E.R.;  $\gamma$  omits.  
<sup>21</sup> predictis tenementis  $\eta$ .      <sup>22-23</sup>  $\eta$  omits.      <sup>24</sup> petitorum  $\delta$ .      <sup>25</sup> predicti  $\eta$ .  
<sup>26</sup>  $\delta$ ,  $\epsilon$ ,  $\eta$ ,  $\theta$ , and E.R. add patris predicti Ricardi.      <sup>27-28</sup> quia  $\eta$ .      <sup>29</sup>  $\eta$  omits.  
<sup>30</sup> prefatus  $\eta$ ; prefati E.R.      <sup>31-31</sup> patrem  $\delta$ .      <sup>32</sup> predictum  $\eta$ .      <sup>33</sup> le  
E.R.      <sup>34-34</sup>  $\eta$  omits.      <sup>35</sup> audiendas  $\eta$ .      <sup>36</sup> terminandas  $\eta$ .      <sup>37</sup> S.  $\eta$ .  
<sup>38-38</sup>  $\delta$  omits.      <sup>39</sup>  $\eta$  omits.      <sup>40</sup> secundum quod  $\eta$ .



ever, rendering annually therefrom to the same Philip for the term of the said Philip's life £6 13s. 4d., to be received in the chief messuage of the said Philip in Guestling in the county of Sussex, that is to say, as to one moiety upon the Feast of the Apostles Philip and James and as to the other moiety upon the Feast of St. Michael etc.

And Richard the son of Richard, being within age, came, and the others did not come, but a certain John Pricket answers on their behalf as their bailiff; and on behalf of the aforesaid Alice he says that the aforesaid Richard, father of the aforesaid Richard, held his tenements in the aforesaid vill of the same Alice; and, that upon his death, she, as chief lady etc. took seisin of the aforesaid tenements by reason of the infancy of the aforesaid Richard son of Richard etc. and afterwards restored the aforesaid tenements to the aforesaid Richard son and heir etc. without thereby doing any wrong or act of disseisin etc. And on behalf of the aforesaid Estrilda he says that she is claiming by action dower from the aforesaid tenements by the endowment of the aforesaid Richard of Wootton formerly her husband etc., and that she claims naught else in them, and has done no wrong nor act of disseisin in respect of them. And on behalf of the aforesaid Stephen he says that the same Stephen, as bailiff of the aforesaid Alice, did, upon the death of the aforesaid Richard the father etc. take seisin of the aforesaid tenements in the name of his lady etc. without thereby committing any act of disseisin etc. And on behalf of the said Osbert, as tenant of a third part of the aforesaid tenements put in view etc. he says that the aforesaid tenements were formerly in the seisin of the aforesaid Isabel of Frittenden the mother of the same Osbert and of the aforesaid Philip and Richard, whose heirs they are, which Isabel died seised of them in her own demesne as of fee. After her death these entered upon the aforesaid tenements as sons and heirs, the tenements being partible, and were seised thereof in common etc., and afterwards the aforesaid Philip and Richard the father etc. ejected the said Osbert from his share; wherefore the same Osbert, before R. Brabazon and his fellows the Justices of our lord King Edward the father of our lord the King that is, commissioned to hear and determine divers trespasses at Maidstone did arraign a certain assize of novel disseisin against the aforesaid Richard, father etc., and recovered by that assize the aforesaid third part free of the aforesaid rent as the aforesaid Isabel, the ancestor etc., held that same

antecessor <sup>1</sup>etc. <sup>2</sup>eandem terciam<sup>2</sup> partem tenuit.<sup>3</sup> Ita quod ipse <sup>4</sup>nullam inde<sup>4</sup> fecit iniuriam seu disseisinam etc. Et idem Ricardus filius Ricardi tenens ij. partes predictorum tenementorum dicit quod predictus Ricardus pater suus obiit inde seisis in dominico suo ut de feodo post cuius mortem ipse intrauit in eisdem ut filius et heres eius etc. absque <sup>5</sup>aliqua<sup>6</sup> disseisina <sup>7</sup>inde facienda<sup>8</sup> et de hoc ponit <sup>9</sup>se super assisam et Philippus similiter<sup>9</sup> et ideo capiatur assisa.

<sup>10</sup>Iurati dicunt<sup>10</sup> super sacramentum suum quod predicta Isabella de Frisingeye aliquo tempore fuit <sup>11</sup>in seisis<sup>11</sup> de predictis tenementis <sup>12</sup>scilicet j. mesagio <sup>13</sup>medietate j. carucate<sup>13</sup> terre cum pertinentiis et inde<sup>12</sup> obiit seisis in dominico suo ut de feodo post cuius mortem predicti Philippus Ricardus pater predicti Ricardi et Osbertus intrauerunt <sup>14</sup>in tenementis illis ut filii ipsius Isabelle et coheredes eo quod tenementa sunt<sup>15</sup> partibilia<sup>14</sup> et dicunt quod <sup>16</sup>postea<sup>17</sup> predicti Ricardus et Philippus<sup>18</sup> predictum Osbertum a predictis tenementis amouerunt<sup>19</sup> ita quod hoc facto conuenit<sup>20</sup> inter predictum Philippum et predictum Ricardum patrem predicti Ricardi quod predictus Philippus concessit et confirmavit predicta tenementa predicto Ricardo patri<sup>21</sup> predicti Ricardi tenenda sibi heredibus et assignatis suis imperpetuum<sup>22</sup> reddendo <sup>23</sup>inde annuatim<sup>23</sup> eidem Philippo ad totam vitam ipsius Philippi <sup>24</sup>vj. li. xiiij. s. et iiij. d.<sup>24</sup> et dicunt quod predictus Osbertus postmodum coram Rogero de<sup>25</sup> Brabasoun et sociis suis iusticiariis <sup>26</sup>domini regis Edwardi patris domini regis nunc ad diversas transgressionem audiendum et terminandum in ipso comitatu assignatis<sup>26</sup> arramavit<sup>27</sup> quamdam assisam noue disseisine versus predictum Ricardum fratrem suum et per assisam illam pro partem suam videlicet terciam partem predictorum tenementorum per iudicium separatim recuperavit Et dicunt quod postquam predictus Osbertus seisis fuit de predicta tercia parte per iudicium predictum predictus Ricardus soluit predicto Philippo predictum redditum per duos annos <sup>28</sup>et postmodum<sup>29</sup> obiit<sup>30</sup> post cuius mortem predicta Alicia <sup>31</sup>seisire fecit predicta tenementa de quibus predictus Ricardus obiit seisis tamquam capitalis domina<sup>32</sup> feodi. Et postea predictus Philippus predicto redditu aretro existente distrinxit in predictis tenementis <sup>33</sup>oneratis de predicto redditu<sup>33</sup> quam quidem destructionem predicta Alicia<sup>34</sup> per predictum Stephanum<sup>35</sup> deliberari

<sup>1-3</sup> ante eam tenuit δ. <sup>2-2</sup> η omits. <sup>4-4</sup> δ omits. <sup>5-6</sup> θ has aliqua seu disseisina, leaving a blank space after aliqua. <sup>5-8</sup> etc. η. <sup>6</sup> δ adds iniuria seu. <sup>7-8</sup> etc. δ.

<sup>9-9</sup> etc. η. <sup>10-10</sup> Iurata dicit η.

<sup>13-13</sup> circiter unam carucatam E.R.

<sup>15</sup> E.R. adds de tenura de Guelikynde et.

<sup>16-16</sup> R. P. δ.

<sup>17</sup> η omits.

<sup>21</sup> pater θ.

<sup>22</sup> η omits.

<sup>23</sup> η omits.

<sup>24</sup> η omits.

<sup>25</sup> η omits.

<sup>26</sup> η omits.

<sup>27</sup> η omits.

<sup>28</sup> η omits.

<sup>29</sup> η omits.

<sup>30</sup> η omits.

<sup>31</sup> η omits.

<sup>32</sup> η omits.

<sup>33</sup> η omits.

<sup>34</sup> η omits.

<sup>35</sup> η omits.



third part ; so that he did no wrong in respect thereof nor act of disseisin etc. And the same Richard, the son of Richard, as tenant of two parts of the aforesaid tenements says that the aforesaid Richard his father died seised in his own demesne as of fee, upon whose death he himself entered upon the same tenements as his son and heir etc. without thereby doing any act of disseisin ; and of this he puts himself upon the assize ; as does Philip. And so an assize is to be taken.

The jurors say upon their oath that the aforesaid Isabel of Fritton was at one time seised of the aforesaid tenements, to wit, of one messuage and of half a carucate of land together with the appurtenances, and that she died seised of them in her own demesne as of fee ; and that upon her death the aforesaid Philip, Richard, the father of the aforesaid Richard, and Osbert entered upon those tenements as the sons and coheirs of that same Isabel, the tenements being partible ; and they say that afterwards the aforesaid Richard and Philip ejected the aforesaid Osbert from the tenements aforesaid, and that thereupon an agreement was made between the aforesaid Philip and the aforesaid Richard, father of the aforesaid Richard, whereby the aforesaid Philip granted and confirmed the tenements aforesaid to the aforesaid Richard, father of the aforesaid Richard, to hold to himself, his heirs and assigns for ever, rendering thence annually to the said Philip during the whole life of the same Philip £6 13s. 4d. ; and they say that afterwards the aforesaid Osbert before Roger Brabazon and his fellows, Justices of our lord King Edward father of our lord the King that is, assigned to hear and determine within the county divers trespasses, did arraign a certain assize of novel disseisin against the aforesaid Richard his brother, and by that assize did recover by judgment his share, to wit, a third part of the aforesaid tenements, to be held separately. And they say that after the aforesaid Osbert was seised of the aforesaid third part by the judgment aforesaid the aforesaid Richard paid to the aforesaid Philip the rent aforesaid during two years, and afterwards died ; and that upon his death the aforesaid Alice, as chief lady of the manor, took seisin of the aforesaid tenements of which the aforesaid Richard died seised. And afterwards, the aforesaid rent being in arrear, the aforesaid Philip distrained upon the aforesaid tenements charged with the aforesaid rent, which distress the aforesaid Alice caused to be replevied by the aforesaid Stephen by plea in the county court. And



fecit in comitatu placitando. Et <sup>1</sup>Iurati quesiti<sup>1</sup> si predictus Philippus distrinxit in predictis duabus partibus que predictus Ricardus pater predicti Ricardi tenuit vel in tercia parte quam predictus Osbertus recuperavit dicunt quod in duabus partibus quas predictus Ricardus tenuit.<sup>2</sup>

II.<sup>3</sup>

Assise de novele disseisine agarde par defaute un des tenaunz et apres fut resceu a pleder en barre pur ceo qil fut deinz age et mist auant un endenture de rentcharge ou dit fut qe en rente sek contre pleder fut cause de disseisine mes pur ceo qil fut rent charge il destreint lautre fyt la deliuerance issi cause de disseisine.

Philippe de Frembsby porta une assise de nouel disseisine vers Alice qe fut la femme Johan de Colombers Richard le fitz Richard de Fremshethe Osbern de Frembsby et se pleint de vj.li. xiiij.s. iiij.d. de rente charge touz forspris Richard vindront par baillif et disoient qe de rien etc. par quei remaindreit lasisse Richard ne vint point par quei lassise fut agarde et remist par defaute des jurours taunt qe a un jour Richard vint et demaunda coment il fut disseisi.

*Stonore.* Lassise fut agarde altre foiz par vostre defaute par quei nous ne devoms repleder a ore.

*Pass.* Richard est de deinz age uers qi vous dites qe lassise fut agarde par sa defaute.

SPIGURNEL. sil voille mettre auant quiteclamacion ou autre fet qe barre lassise vncore serra il bien resceu.

*Stonore.* donqe vous dioms nous qe Philippe lessa les tenemenz mis en vewe a Richard de F. a lui et a ses heirs rendant a lui vj.li. xiiij.<sup>4</sup>s. iiij.d. a terme de sa vie par an et mist auant un endenture qe voleit ceo.

*Pass.* uncore ne assignez vous cause de disseisine Kar le retenir nest pas cause.

*Stonore.* en rente seke le countrepleder est disseisine mes pur ceo qe cest une rente charge nous vous dioms qe nous feymes la destreinte et vous la deliuerastes.

*Pass.* Richard respount come tenaunt de deus parties et dit qe un Rauf tient partie des tenemenz mis en vewe nient nome en le bref jugement etc.

*Stonore.* altrefoiz en mesmes cest Eyre portasmes assise vers mesmes cestui Richard et touz les autres nomez en le bref forspris

<sup>1</sup> Iusticiarii quesiverunt δ. <sup>2</sup> E.R. ends abruptly at this point. A blank space follows, but the record was never completed. <sup>3</sup> Text of (II) from a.  
<sup>4</sup> sic.

the jurors, being asked whether the aforesaid Philip distrained upon the aforesaid two parts which the aforesaid Richard, father of the aforesaid Richard, held or upon the third part which the aforesaid Osbert recovered, say that it was upon the two parts which the aforesaid Richard held.

## II.

Assize of novel disseisin awarded by the default of one of the tenants ; who, because he was within age, was afterwards received to plead in bar. He tendered an indenture granting a rent-charge ; and it was said that counterpleading to a rent seck constituted an act of disseisin, and that in the present case of a rent-charge the replevyng by the defendants of the demandant's distress acted as a disseisin.

Philip of Frittenden brought an assize of novel disseisin against Alice that was wife of John Culverhouse, Richard the son of Richard of Frittenden and Osbert of Frittenden, and complained that he had been disseised of a rent of £6 13s. 4d. All, except Richard, appeared by bailiff and said that they had done naught etc. by reason of which the assize should come. Richard did not appear, and therefore the assize was awarded and was adjourned for lack of jurors until a day when Richard came and asked how he was a disseisor.

*Stonore.* The assize was awarded on account of your previous default, and therefore we need not plead over again now.

*Passeley.* Richard, by whose default you say the assize was awarded against him, is within age.

SPIGURNEL J. If he wants to put forward a quitclaim or other deed that bars an assize, he will yet be well received.

*Stonore.* Then we tell you that Philip granted the tenements put in view to Richard of Frittenden and to his heirs, to render to him, Philip, £6 13s. 4d. annually for the term of his life—and he tendered an indenture in proof.

*Passeley.* You have not yet shown any act of disseisin, for the withholding of rent is not such an act.

*Stonore.* In a case of rent seck counterpleading constitutes an act of disseisin ; but, because this is a rent-charge, we say that we levied distress and that you replevied it.

*Passeley.* Richard answers as tenant of two thirds and says that one Ralph holds a part of the tenements put in view and he is not named in the writ. Judgment etc.

*Stonore.* Ere now in this same Eyre we brought an assize against this Richard and all the others named in the writ, except Osbert, in

Osbern de mesme ceste rente et Richard dit adonqe qe Osbern en tient partie etc. et par taunt abbati nostre bref par quei nous auom [*sic*] porte nostre bref et ioint Osbern jugement si par cele excepcioun puissez cesti bref abbatre desicom vous nous donastes cestui bref par la primere excepcioun.

*Herui.* vous abbatistes altrefoiz soun bref par excepcioun de un tenaunt etc. vous ne le abbateret par autele excepcioun qe nel eussez adonques assigne Kar issi assignerez vous de chescun acre un tenaunt et issi delaier le pleintif par vostre malice qe serreit graunt meschef de lei qe nous agardoms lassise si vous ne diez autre chose.

*Pass.* Osbern vous dit qil ne fut paas nome en le primer bref etc. qe Raufe tint etc. et demaundoms jugement etc.

*Herui.* fetes venir lassise.

*Pass.* Sire Osbern respount com tenaunt de la tierce partie etc. et vous dit uncore qe les tenemenz mis en vewe furent en asqun temps en la seisine une Cecilie de F. qe morust seisi apres qi mort entrerent R. P. et cesti Osbern en lentier come freres et un heir pur ceo qe les tenemenz sunt departables et tindrent en comune et puis Richard et Philippe ousterent Osbern par quei il porta lassise uers Richard etc. et rescouera la partie etc. et demaundoms jugement sil puet sa purpartie charger la quele il rescouera par assise descharge.

*Herui.* vous ne abbatez paas soun bref par taunt qe Osbern est nómee le quel vous mesmes les chaceastes a nomer.

*Stonore.* Il vint et dit qil rescouera uers Richard et ceo ne deit paas nuire a Philippe etc.

Lassise fut agarde qe vint et dit qe les tenemenz furent en asqun temps en la seisine Cecilie de F. qe morust seisi apres qi mort entrerent en lentier des tenemenz Philippe qe porta cestui bref Richard de F. pere cesti Richard qe ore est nomee en cestui bref et Osbern de F. tous treis freres et un heir pur ceo qe les tenemenz sunt departables entre maels et tindront en comune tauntqe Richard et Johan [*sic*] ousteront Osbern. Et puis acouynt entre les auaunt diz Richard et Philippe qe Richard tendroit toute la terre a lui et a ses heirs rendaunt a Philippe a terme de sa vie vj.*li.* xiiij.*s.* iiij.*d.* par an saunz ceo qe Richard vnqes auaunt ne se demist a Philippe et Richard lui paia la rente de un an. Et puis vint Osbern et porta une assise de nouel disseisine uers Richard en temps de Traillebastoun deuaunt Sire Roger Brabazon etc et. recoueri la tierce partie de lentier etc. Et Richard puis cel recouerir paya la rente auxi bien apres le rescouerir come auaunt tote sa vie



respect of this same rent, and Richard then said that Osbert held a part etc., and so abated our writ; and therefore we have now brought a writ in which we have joined Osbert. Judgment whether you can abate this writ by that exception, since this writ is formulated in accordance with your first exception.

STAUNTON J. Upon a previous occasion you abated his writ by an exception in respect of a tenant etc. You will not abate it [now] by an exception similar to the one you took then; for, if you could, you would go on alleging a tenant for every acre and so delay the plaintiff by your malice, and that would be an unfortunate state of the law. We shall award the assize if you do not say something else.

*Passeley.* Osbert tells you that he was not named in the first writ etc., that Ralph holds etc.; and we ask judgment etc.

STAUNTON J. Call the assize.

*Passeley.* Sir, Osbert answers as tenant of the third part etc. and tells you again that the tenements put in view were at one time in the seisin of one Cecily of Frittenden who died seised, and that upon her death Richard, Philip and this Osbert entered upon the whole as brothers and one heir, for the tenements are partible; and they held in common. Richard and Philip afterwards ejected Osbert, who thereupon brought the assize against Richard etc. and recovered the third part etc., and we ask judgment whether the demandant can charge Osbert's share which he recovered discharged by the assize.

STAUNTON J. You will not abate his writ by reason of Osbert being named in it, for you yourselves forced him to name him.

*Stonore.* He came and said that he recovered against Richard, which ought not to prejudice Philip etc.

The assize was awarded and came and said that the tenements were at one time in the seisin of Cecily of Frittenden who died seised, and that upon her death there entered upon the whole of the tenements Philip, who brings this writ, Richard of Frittenden the father of this Richard who is now named in this writ, and Osbert of Frittenden, three brothers and one heir, for the tenements are partible amongst males, and they held in common until that Richard and Philip ejected Osbert. And then the aforesaid Richard and Philip agreed between themselves that Richard should hold all the land to himself and his heirs, rendering therefor to Philip £6 13s. 4d. annually for the term of his life, without any previous demise by Richard to Philip; and Richard paid the rent for one year. And then came Osbert and brought a writ of novel disseisin against Richard at the time of the Trailbaston before Sir Roger Brabazon etc. and recovered the third part of the whole etc. And after this recovery Richard paid the rent, as well after the recovery

saunz ceo qe Osbern rien ne payast puis Richard se lessa morir et pur ceo qe les tenemenz furent tenuz de Johane de Columbiere ele entra en les tenemenz par resoun de le noun age Richard le fiz Richard qe puis fesoit gree a la dame et ele lui rendy sa terre et Philippe vint apres la mort Richard taunt come fut einz etc. ut supra fit la destreinte et un Esteuene qest nommee en le bref com baillif la dame fesoit la deliuraunce et Johan et Philip plederont en Conte et prierent eyde.

SPIGURNEL demaunda com bien la terre valut par an qe fut en la seisine Cecilie dit fut qe xij.s.

SPIGURNEL. Com bien de temps aad este ceste rente arere.

v. aunz.

SPIGURNEL. Donques sumes nous ascerte des arrerages a quel damage si un disseisine soit agarde.

*Jur.* de j. marks.

*Stonore.* Sire a une chose couient il qe vous eyez regard qil unt dit qe Richard auera les tenemenz a lui et a ses heirs et ceste charge ne dure mie mes a vie Phelip.

*Pass.* Sire eyez a ceo qil sount a rescouerir ceste charge par un fet qe voet qe Phelip lessa a Richard les tenemenz qe furent en asqun temps a Cecilie sa mere et il dit qe Richard et Phelip tyndrent en comune et qe Richard vnqes ne demist a Phelip par quei plus ne poeit estre le soen forsqe la moite.

SPIGURNEL. Attendez vos jugemenz.

#### NOTA.<sup>1</sup>

Nota.

Nota si deus parceners entrent un heritage et lun disseise lautre et ceo seit troue par assise le disseisi recouera la moietie<sup>2</sup> a tenir en seueralte propter idem disseisine<sup>3</sup> par SPIG. et *Marlb.*<sup>4</sup>

#### SIMOND v. BURSTALL.<sup>5</sup>

##### Note from the Eyre Roll.

The issue for the assize was " si Willelmus de Brustowe Thomas de Chiselhurst Willelmus Halemman Iohannes Pinchon Iohannes Legat Ricardus atte Hoke Iohannes de Berkyng Galfredus Swetesire et Iohannes Palefreyman iniuste etc. disseisuerunt Willelmum Simund de Plumpstede de libero tenemento suo in Plumpstede post primam etc."

Of the defendants William alone appears. The others through one Robert of Malemeins disclaim any interest in the land and deny that they have disseised William Simon.

<sup>1</sup> Note from  $\eta$  and  $\theta$ . Text from  $\theta$  collated with  $\eta$ . <sup>2</sup> meiete  $\eta$ . <sup>3-4</sup>  $\eta$  omits.

<sup>5</sup> Reported by  $\gamma$ ,  $\delta$ ,  $\epsilon$ ,  $\zeta$ ,  $\eta$  and  $\rho$ . Names of the parties from E.R., which spells the defendant's name variously as *Brustowe*, *Bristowe* and *Burstalle*.

as before it, all his life, without Osbert paying aught. Afterwards Richard died ; and, because the tenements were holden of Joan Culverhouse, she entered upon the tenements by reason of the nonage of Richard the son of Richard, who afterwards made agreement with the lady, and she restored him his land. And after Richard's death, while Joan was in possession etc. *as above*, Philip came and distrained, and one Stephen, who is named in the writ, replevied as the lady's bailiff, and Joan and Philip pleaded in the county court ; and [the assize] prayed the aid [of the Court].

SPIGURNEL J. asked what the annual value of the land in Cecily's seisin was ; and the value was said to be twelve shillings.

SPIGURNEL J. How long has this rent been in arrear ?

Five years.

SPIGURNEL J. We are now certified as to the arrears. If a disseisin be adjudged, what are the damages ?

*The Jury.* One mark.

*Stonore.* Sir, there is one matter to which you should have regard. They have said that Richard will hold the tenement to himself and his heirs, while this charge endures only for Philip's life.

*Passeley.* Sir, have [regard] to the fact that they are seeking to recover this charge by means of a deed which says that Philip granted to Richard the tenements which were formerly in the seisin of Cecily his mother ; and [the assize] says that Richard and Philip held in common and that Richard never demised to Philip ; wherefore Philip could not have had more than a moiety.

SPIGURNEL J. Await your judgments.

#### NOTE.

Note that if two parceners enter the same heritage and one of them disseise the other and it be so found by assize, he that has been disseised shall recover a moiety to hold in severalty by reason of such disseisin. By SPIGURNEL J. and *Malmerthorpe*. Note.

#### SIMON v. BRISTOL.

##### Note from the Eyre Roll—continued.

The plea of William of Bristol "ut tenens" was :—quod quidam Ricardus de Burstalle aliquo tempore dimisit predicto Willelmo Simund et cuidam Thome Perceual quatuor acras terre cum pertinenciis unde due acre modo posite sunt in visu etc. tenendas ad terminum annorum qui nondum preteriit etc. Et dicit quod idem Willelmus Simond et Thomas postea tenementa predicta participauerunt inter eos quiquidem Thomas perceuall postea obiit.



## Note from the Eyre Roll—continued.

post cuius mortem quidam Thomas filius et heres ipsius Thome intrauit in predictis duabus acris que pater suus tenuit et terminum suum inde concessit ipsi Willelmo de Burstowe etc. quem terminum idem Willelmus hucusque continuauit absque aliqua disseisina inde faciendo etc.

William Simon's replication, upon which issue was joined was :—quod

I.<sup>1</sup>

Willem Simond porte assise de novel disseisine vers Willem de Bristowe<sup>2</sup> et se plaint <sup>3</sup>estre disseisi<sup>3</sup> de ij. acres de terre.

*Stonore* assise ne doit estre qar <sup>4</sup>nous vous dioms<sup>5</sup> qe W. mesme qi porte cest bref en la seisine un Thomas Perseval relessa et qitclama tut le droit qil avoit en mesme les ij. acres <sup>6</sup>et par ceo fet etc.<sup>7</sup>

*Hertepol* fetez vous prive a Thomas etc.

SPIGURNEL il est tenant de la terre et ad vostre fet en poyn.

*Westcote* tut fuse jeo entre par disseisine jeo useie la quitecleime.

*Stonore* <sup>8</sup>ad idem<sup>9</sup> vous le avez fet tenant par vostre bref dount a lui est de user qant qe peut valer al tenant.

*Westcote* pur deliverer la court nous dioms qe vous relessastes<sup>10</sup> a Thomas<sup>11</sup> de T. descendirent les tenementz a Richard <sup>12</sup>son fitz<sup>12</sup> Richard nous enfeffa etc.

*Hertepol* mostrez la chartre de feffement.

SPIGURNEL il <sup>13</sup>nad mie meste etc. et hoc dixit pur ceo qil ne pout mie countrepleder le feffement.<sup>13</sup>

*Hertepol Laufer*<sup>14</sup> sire nous vous dioms qe les tenementz des yeux nous sumes pleintz ne sount pas contenuz en la quitecleime et si trove soit etc. donques dioms qe T. ne fust mie seisi de les ij. acres qant la quitecleime fust fete.

SPIGURNEL vous qe est plaintif ne poez pas pleder et si trove soit etc. mes le defendant peut et nomement en ceo cas qar si nous trovoms<sup>15</sup> qe les tenementz etc.<sup>16</sup> sount<sup>17</sup> contenuz en la quitecleime <sup>18</sup>vous ne prendrez rien etc. et si <sup>19</sup>le revers<sup>19</sup> etc.<sup>20</sup> nous enqueroms des damages soulement et hoc dixit bis qar il ad mis avant la quitecleime en barre <sup>21</sup>et ad hoc concordat curia.<sup>21</sup>

*Westcote* sire il ad mis en vewe iiij. acres etc. dount sil se plaint de les ij. acres<sup>22</sup> en C. <sup>23</sup>nous useroms le fet qe nous avoms mis avant etc. et

<sup>1</sup> Text of (I) from  $\gamma$  collated with  $\delta$ ,  $\epsilon$ ,  $\zeta$ . <sup>2</sup> B.  $\delta$ ; Burstowe  $\epsilon$ ;  $\delta$ ,  $\zeta$  add et plusours autres. <sup>3-3</sup> from  $\epsilon$ ; etc.  $\gamma$ . <sup>4-5</sup> added from  $\epsilon$ . <sup>6-7</sup> jugement si encountre ceo feat etc.  $\zeta$ . <sup>8-9</sup>  $\zeta$  omits. <sup>10</sup>  $\zeta$  adds et quiteclamastes. <sup>11</sup>  $\delta$  adds et. <sup>12-12</sup> com fitz et heyr et  $\delta$ . <sup>13-13</sup> ne covent point qar vous ne poez pas countrepleder  $\zeta$ . <sup>14</sup>  $\zeta$  omits. <sup>15</sup>  $\delta$  adds per assisam. <sup>16</sup>  $\delta$  adds ne. <sup>17</sup>  $\delta$  adds pas. <sup>18-20</sup>  $\delta$  omits. <sup>19-10</sup> nous trovoms qe les tenementz ne sunt pas contenuz en la quiteclame  $\epsilon$ ,  $\zeta$ . <sup>21-21</sup> e a ceo se acorda la Curt  $\delta$ ,  $\epsilon$ ,  $\zeta$ . <sup>22</sup>  $\delta$ ,  $\epsilon$ ,  $\zeta$  add qe gisent. <sup>23-1</sup> (on p. 118)  $\delta$  omits.

**Note from the Eyre Roll—continued.**

predictus Ricardus de Burstall feoffavit ipsum de predictis tenementis tenendis sibi et heredibus suis in feodum et ipsum inde in seisinam posuit et inde seisinam suam continuavit ut de libero tenemento quousque predicti Willelmus de Bristowe et alii ipsum disseisiuerunt etc.

The record was not continued further.

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I.

William Simon brings an assize of novel disseisin against William of Bristol and complains of being disseised of two acres of land.

*Stonore.* Assize ought not to be, for we tell you that the same William who brings this writ released and quitclaimed, during the seisin of one Thomas Percival, all the right which he had in these same two acres ; and by this same deed etc.

*Hartlepool.* Are you making yourself privy to Thomas ?

SPIGURNEL J. He is tenant of the land and has your deed in his hand.

*Westcote.* Even though I had entered by disseisin I could use the quitclaim.

*Stonore, ad idem.* You have made him tenant in your writ. He is therefore entitled to use anything that may help him as tenant.

*Westcote.* To assist the Court we say that you released to Thomas. From Thomas the tenements descended to Richard his son. Richard enfeoffed us etc.

*Hartlepool.* Produce the charter of feoffment.

SPIGURNEL J. He need not do that. And he said this because the demandant could not counterplead to the feoffment.

*Hartlepool. Laufer.* Sir, we tell you that the tenements in respect of which we bring our plaint are not included in the quitclaim ; and if it should be found etc., then we say that Thomas was not seised of the two acres at the time the quitclaim was made.

SPIGURNEL J. You who are the plaintiff cannot plead to a hypothetical finding, but the defendant can do so, and especially in the present circumstances ; for if we find that the tenements etc. are included in the quitclaim you will take naught etc. ; and if the reverse etc. we shall inquire as to damages only. And this he said twice, for the defendant had tendered the quitclaim in bar. And the Court was agreed as to this.

*Westcote.* Sir, the complainant has put four acres in view. If he is complaining in respect of the two acres in C. we shall use the deed which

sil se pleint de les ij. acres qe gisent en D. <sup>1</sup>qe fust un autre lieu donques<sup>2</sup> dioms qe <sup>3</sup>quant a ceus<sup>3</sup> nous navoms fet nul tort qar il mesme est seisi del fraunktenement et nous ne clamoms qe terme de ij. auns.

*Hertepol* nous <sup>4</sup>pleynoms de les ij. acres en D.<sup>4</sup> et de ceus prioms lassise.

peus qant partie del assise furent jurez—

*Hertepol* demanda ceo qil avoit del terme et <sup>5</sup>de q<sup>5</sup> lees.

*Westcote* <sup>6</sup>nous ne devons<sup>6</sup> pas repleder.<sup>7</sup>

*Hertepol* sire il nous ad conu le fraunktenement et cleime terme il lui covent mettre avant especialte <sup>8</sup>del terme.<sup>8</sup>

et dictum fuit qe <sup>9</sup>si *Hertepol* le<sup>10</sup> ust plede primes il le ust chace davoir mostre ceo qil avoit del terme.

II.<sup>11</sup>

Willem Simond porte une assise de nouel disseisine vers Johan de Burstall et ceo<sup>12</sup> pleint estre disseisi de ij. acres de terre.

*Ston.* Johan vous respond com tenant et dit qil ad a noun Johan de Brustall jugement etc.

*SPIG.* il donne cel excepcion com tenant de vous chacer de nomer le persone dreit nom qar autrement par cas il perdreit son bref de garantie de chartre qe dit altre qe tenant ne le put auer usee pur quei respondez.

*Lauf.* nous voloms<sup>13</sup> averer qil ad a noun Johan de Brustall.

*Ston.* assise ne deit estre qar les tenemenz mis en vewe furent en acun tens en la seisine Thomas Perseual en qi seisine meme celi Willem relessa et quitclama tot son droit etc. Thomas mourust seisi apres qi mort entra un Richard com fiz et heir et lessa memes les tenemenz a Johan qe ore est tenant jugement si encontre son fet demene <sup>14</sup>assise deinue auer.

*Hertep.* vous usez quiteclame fait a Thomas a qi vous estes estrange et ne mostres pas qe vous estes assigne iugement etc.<sup>15</sup>

*Wescote.* tot <sup>16</sup>sum eo<sup>17</sup> einz par disseisine et ieo usse en poin vostre reles<sup>18</sup> ieo vous barrez.

*SPIG.* il est tenant des tenemenz et ceo suppose<sup>19</sup> vostre purchase demene et il met avant vostre fet qe esteint vostre droit pur quei respondez sil seit vostre fet ou noun.

*Lauf.* nous conisoms bien le fet mes a tens de la confeccion Thomas

<sup>1-2</sup> nous vous ζ.    <sup>3-3</sup> ζ omits.    <sup>4-4</sup> clamons ij. acres en C. δ.    <sup>5-6</sup> € omits.  
<sup>6-6</sup> Vous ne devez ζ.    <sup>7</sup> pleder δ.    <sup>8-8</sup> δ omits.    <sup>9-10</sup> sil ζ.    <sup>10</sup> δ omits.  
<sup>11</sup> Text of (II) from η collated with θ.    <sup>12</sup> se θ.    <sup>13</sup> volez θ.    <sup>14-15</sup> supplied  
from θ; η omits.    <sup>16-17</sup> fuz ieo θ.    <sup>18</sup> θ adds et quiteclame.    <sup>19</sup> for  
suppose θ has supposes vous par.



we have tendered etc., and if he is complaining in respect of the two acres which are situated in D., which is another place, we tell you that in respect of these we have done no wrong, for he himself is seised of the freehold and we claim naught but a term of two years.

*Hartlepool.* We are complaining in respect of the two acres in D. and in respect of those we pray the assize.

Afterwards, when part of the assize had been sworn—

*Hartlepool* asked what the defendant had in proof of a term, and by whose grant he had it.

*Westcote.* You must not ask us to plead again.

*Hartlepool.* Sir, he has admitted our freehold and claims a term. He ought to produce a specialty in proof of the term.

And it was said that if *Hartlepool* had so pleaded at first he would have forced the defendant to produce proof of the term.

## II.

William Simon brings an assize of novel disseisin against John of Burstall, complaining of being disseised of two acres of land.

*Stonore.* John answers you as tenant and says that his name is John of Bristol. Judgment etc.

SPIGURNEL J. He takes this exception as tenant to force you to name him correctly ; for otherwise, supposing he should lose here, he would not be able to use his writ of warranty of charter, for the charter gives another as tenant. Wherefore answer.

*Laufer.* We will aver that his name is John of Bristol.

*Stonore.* Assize ought not to be, for the tenements put in view were at one time in the seisin of Thomas Percival ; in whose seisin this same William released and quitclaimed his whole right etc. Thomas died seised, and upon his death one Richard entered as son and heir, and granted the same tenements to John who is now tenant. Judgment whether he ought to have an assize against the evidence of his own deed.

*Hartlepool.* You rely upon a quitclaim made to Thomas, to whom you are a stranger, and you do not show that you are an assignee. Judgment etc.

*Westcote.* Though I were in by disseisin, yet, if I had your release in my hand, I could bar you.

SPIGURNEL J. He is tenant of the tenements, and your own writ says as much, and he tenders your deed which extinguishes your right. Therefore you must answer whether it be your deed or not.

*Laufer.* We admit the deed, but we say that at the time when it was made Thomas was not seised etc. ; and, if it should be found that he

ne fut pas seisi etc. et si troue fut qil fut<sup>1</sup> seisi etc. les tenemenz ne sunt pas compris en la quiteclame prest etc.

STANT. lun et lautre <sup>2</sup>qe vous donez<sup>3</sup> sunt peremptorie pur quei <sup>4</sup>tenez vous a lun<sup>5</sup> et estre ceo vous estes pleintif qi ne poet pleder si troue seit etc.

SPIG.<sup>6</sup> il unt mis avant reles <sup>7</sup>et quiteclame<sup>8</sup> et pledent hors de point de assise et vous dites qe les tenemenz ne sunt pas compris etc. donc <sup>9</sup>sil soit troue par pais qe les tenemenz mis en vewe ne sont pas compris en la quiteclame.<sup>10</sup> nous ne froms altre chose mes prendre assise de damages et si troue seit le revers vous ne prendreit rien par lassise pur quei vous nestes pas en cas de pleder si troue seit etc. pur quei tenet vous al un.

Lauf. les tenemenz mis en vewe nient compris <sup>11</sup>en la quiteclame prist<sup>12</sup> etc.

<sup>13</sup>Stonor. vous auez mis en vewe iiij. acres de terre ne partez ne seurez coment qe vous pleuez [*sic*] de ij. dont en les ij. nous clamons fee et droit et franktenance et en les autres ij. nous ne clamons fors qe terme de iij. ans et le franctenance a vous mesmes pur qi dites nous des queux ij. des iiij. vous pleinez.

Hert. ceo nest nos pas mestier a ore qar vous auez pleade a les tenemenz dont nous pleinoms etc. et auez mis auant en cort release et quiteclame a qi nous issumus deuparler et auoms respondi iugement si ore pussez recover.

SPIG. en assise de novel disseisine il le purra bien faire mes sil fuit en un Precipe quod reddat autre serroit.

Et puis agarderent lassise denquerer la verite de ceo qil clama terme.

Et mirum fuit de ceo qe Hertipole plede point a ceo qil plainèrent terme et naueroit pas especialte qe ceo prouie.<sup>14</sup>

#### GRANDISON v. SCOLAND.<sup>15</sup>

Willem de Graunzoun altre fethe devant Sire Henri Spigurnel<sup>16</sup> porta une assise de novel disseisine vers Frank de Scolaunde et Rose qi fut la feme Frank [*sic*] de Scolande et Watier de Gloucestre et se plaint estre disseisi de son franc tenement en Hortone sauer de une carucee de terre etc. Rose respond com tenant de la terce partie et dit qe ele clama

<sup>1</sup> soit  $\theta$ . <sup>2-3</sup> added from  $\epsilon$ . <sup>4-5</sup> from  $\theta$ ;  $\eta$  has tenet il un. <sup>6</sup>  $\theta$  adds alium diem. <sup>7-8</sup> added from  $\theta$ . <sup>9-10</sup> from  $\theta$ ;  $\eta$  has si ceo seit troue par pais. <sup>11-12</sup> added from  $\theta$ . <sup>13-14</sup> added from  $\theta$ ;  $\eta$  omits. <sup>15</sup> Reported by  $\alpha$ ,  $\beta$ ,  $\gamma$ ,  $\delta$ ,  $\epsilon$ ,  $\eta$ ,  $\theta$ . Text from  $\gamma$  collated with  $\theta$ . The versions given by  $\alpha$ ,  $\beta$ ,  $\gamma$ ,  $\delta$  and  $\epsilon$  are more or less exact copies of the record and differ so slightly from the version occurring in the report of the *Attaint* (Vol. I. pp. 158-184) between the same parties that no useful purpose would be served by giving them here. <sup>16</sup>  $\theta$  adds et ses etc.

was seised etc., [then we say] that the tenements are not included within the quitclaim. Ready etc.

STAUNTON J. Each of the answers you give is a conclusive plea in itself ; therefore abide by one or the other. And, besides this, you are plaintiff and cannot plead to a hypothetical finding.

SPIGURNEL J. They have tendered release and quitclaim and plead outside the points of the assize ; and you say that the tenements are not included etc. If, then, it be found by the jury that the tenements put in view are not included in the quitclaim, we shall take an assize as to the damages only and of naught else. And if the opposite should be found you will gain naught by the assize ; wherefore you are not in a position to plead to a hypothetical finding etc. Therefore abide by one answer or the other.

*Laufer.* The tenements put in view are not included in the quitclaim. Ready etc.

*Stonore.* You have put in view four acres of land without distinguishing them severally, though it is in respect of two acres that you complain. Now, in two [of these four acres] we claim fee and right and freehold, while in the other two we claim naught but a term for three years, and we allow the freehold to be in you. Therefore tell us in respect of which two of these four acres it is that you make your plaint.

*Hartlepool.* We need not do that now, for you have pleaded to the tenements in respect of which we make plaint etc. and you have tendered in Court a release and quitclaim, upon which we went out to imparl, and we have replied. Judgment whether you can recover.

SPIGURNEL J. He may very well do so in an assize of novel disseisin, though it would be otherwise in a *precipe quod reddat*.

And then they awarded the assize to inquire of the truth of the defendant's claim to a term.

And it was strange that *Hartlepool* did not take the objection that they had no specialty in proof of the term they claimed.

#### GRANDISON v. SCOLAND.<sup>1</sup>

William Grandison had previously<sup>2</sup> brought an assize of novel disseisin before SIR HENRY SPIGURNEL against Frank Scoland and Rose, who was Richard<sup>3</sup> Scoland's wife, and Walter of Gloucester, complaining that he had been disseised of his freehold in Horton, to wit of one carucate of land etc. Rose answers as tenant of the third part

<sup>1</sup> See *Introduction*, p. xxv.

<sup>2</sup> *Sc.* to the action of *Formedon*, reported in Vol. II. pp. 186-200.

<sup>3</sup> The *Frank* of the text is a mistake. Rose was *Richard* Scoland's wife.



rien sinon dower de dowement Ricard de Scoland son baron et pres<sup>1</sup> fut de atoner a qi qe la court agardereit etc. Frank respondit com tenant de ij. parties et dit qe ceus tenemenz furent acun tens en la seisine Geffray de Scolaund qi hors de sa seisine dona <sup>2</sup>mesmes les tenemenz<sup>3</sup> a Ricard de Scoland et a les heirs de son cors engendres et sil deuiast sanz heir qe les tenemenz retornassent etc. et dit qe Ricard morust sanz heir de son cors etc. apres qi mort il entra com cosin et heir Geffray le donour sanz tort etc. Willem dit qil coniseit bien qe Geffray dona a Ricard en fee taile ausicom il auoit dit mes il dit qe Geffray apres ceo doun relessa et quitclama en la seisine meme ceti Ricard tot le dreit etc. a tener de chief seignourage de fee pur quei Ricard se atorna a<sup>4</sup> Otes de Graunzoun adonques seignour de Maner de Kemesinge a qel maner<sup>5</sup> les seruices de ceus tenemenz sont regardans. Pus apres Sire Otes dona le maner a quei etc. a Willem de Graunzoun par qel doun Ricard de Scoland atorna a ly <sup>6</sup>de son home<sup>7</sup> le qel Ricard fut bastard et morust <sup>8</sup>en son homage<sup>9</sup> saunz heir de son cors apres qi mort Willem entra com en sa eschete et seisi ieques tant qil fut disseisi.<sup>10</sup>

Lassise fut prise qe dit qe Ricard de Scoland tint de Willem Graunzoun et qe Geffray auoit relese a Ricard ut supra pur quei agarde fut qe Willem recouerist seisine de terre <sup>11</sup>par vewe des Iurours et ses damages de xl. li.<sup>12</sup>

ANON. v. ANON.<sup>13</sup>

Nova  
Disseisina.

Un Jon porta assise de novel disseisina vers une Agnes et se pleint estre disseisi de son fraunktenement <sup>14</sup>en B.<sup>14</sup>

*Westcote*<sup>15</sup> il yavert un Simond qi avoit ij. femmes de la primer il engendra un Richard et Thomas de la seconde il engendra un Adam et ceste<sup>16</sup> Agnes etc. apres <sup>14</sup>la mort Simond<sup>14</sup> entrerent Richard Thomas et Adam com fitz et heirs Simond en ceus tenementz et autres dount les tenementz des queux Jon se pleint a ore furent assignez a la purpartie Adam <sup>17</sup>quant il firent la purpartie<sup>17</sup> et vous dioms qe Adam morust saunz heir de son corps par qey le droit de sa purpartie descendi a<sup>18</sup> Agnes com a soer et heir. . Peus mesme ceste Agnes se lessa esposer a un Jon pierre cesti Jon qi porte cest assise. Peus vient un Simond ael Agnes et osta Jon et Agnes de mesme les tenementz et peus les rendi ariere a Jon et Agnes come le droit Agnes issint qe par cel rendre Agnes fust en son

<sup>1</sup> prist  $\theta$ .      <sup>2-3</sup> added from  $\theta$ .      <sup>4</sup>  $\theta$  adds Sire.      <sup>5</sup> added from  $\theta$ .  
<sup>6-7</sup> from  $\theta$ ; etc.  $\eta$ .      <sup>8-9</sup> added from  $\theta$ .      <sup>10</sup>  $\theta$  adds etc. par qi.      <sup>11-12</sup> from  
 $\theta$ ; etc.  $\eta$ .      <sup>13</sup> Reported by  $\gamma$ ,  $\delta$ ,  $\epsilon$ . Text from  $\gamma$  collated with  $\delta$ ,  $\epsilon$ .  
<sup>14-14</sup>  $\delta$  omits.      <sup>15</sup>  $\epsilon$  adds nous vous dioms qe.      <sup>16</sup> une  $\delta$ .      <sup>17-17</sup> from  $\epsilon$ .  
<sup>18</sup>  $\delta$  adds ceste.

and says that she claims naught save dower by the endowment of Richard Scoland her husband, and that she is ready to attorn herself to whomsoever the Court shall rule etc. Frank answers as tenant of two thirds and says that these tenements were at one time in the seisin of Geoffrey Scoland who, out of his seisin, granted these same tenements to Richard Scoland and the heirs of his body begotten, with remainder, if Richard died without heir, to etc.; and he said that Richard died without heir of his body etc. and that, upon his death, he, Frank, entered as cousin and heir of Geoffrey the grantor without wrong etc. William said that he admitted that Geoffrey granted to Richard in fee tail as Frank had said, but he said that subsequently to that grant Geoffrey released and quitclaimed, during the seisin of this Richard, all the right etc. to hold of the chief lord of the fee; wherefore Richard attorned himself to Otto Grandison, who was then lord of the manor of Kemsing, to which manor the services of these tenements are regardant. Afterwards Sir Otto granted the manor to which etc. to William Grandison; and, by reason of that grant, Richard Scoland attorned himself to William by his homage. The which Richard was a bastard and died in William's homage without heir of his body; and upon his death William entered as upon his escheat, and was seised until that he was disseised.

The assize was taken and it said that Richard Scoland held of William Grandison, and that Geoffrey had released to Richard *as above*; wherefore judgment was given that William recover seisin of the land by view of the jurors, and damages in the sum of forty pounds.

## ANON. v. ANON.

One John brought an assize of novel disseisin against one Agnes and complained of being disseised of his freehold in B.

Novel  
disseisin.

*Westcote.* There was a certain Simon who had two wives. Of the first he begat one Richard and Thomas. Of the second he begat one Adam and this Agnes etc. Upon Simon's death, Richard, Thomas and Adam entered, as Simon's sons and heirs, upon these tenements and others. Of these, the tenements in respect of which John now complains were assigned to Adam as his share when the apportionment was made. And we tell you that Adam died without heir of his body, and, therefore, the right in his share descended to Agnes as his sister and heir. This same Agnes afterwards married one John, the father of the John who brings this assize. Then came one Simon, Agnes's grandfather, and ejected John and Agnes from these same tenements and afterwards surrendered them to John and Agnes as of the right of

primer estat com en son droit heritage et vous dioms qe cesti Jon vynt et se voleit aver abatu en mesme les tenementz <sup>1</sup>apres la mort son pere<sup>1</sup> et nous nel suffrismes point. Jugement si de tiel<sup>2</sup> abatement <sup>3</sup>assise deyve estre.<sup>3</sup>

*Hengham.* Jon nostre piere fust soul seisi en son demene com de fee et de droit et morust seisi apres qi mort nous entrames com fitz et heir et seisi fumes tauntqe par lui disseisi etc.

HERVI <sup>4</sup>a *Westcote*<sup>4</sup> il vous respond asez par quei veigne lassise.

## ATTE HEGHES v. LE FEUER.<sup>5</sup>

### I.

Novele diseisine ou le plaintif fut outre meer quaut soun pere morust et ses soers entrerount et alieront et pus il entra sur les heirs ceux qe furent feffez par ses soers.

William le fitz Jurdan Atte Heghes porta un assise de novel deseisine vers Johan le fitz Johan le Feuere et une Maud qe firent defaute par quei lassise fut agarde qe dit qe un Jurdan de H. pere William murust seisi de ceux tenemenz en soun demene come de fee apres qi mort entreront deus filies come un heir et departirent les tenemenz entre eux dount Maude la une parcener aliena sa purpartie a un Johan la Feuer pere<sup>6</sup> cesti Johan vers qi ceste assise est porte. Johan le pere morust et Johan<sup>7</sup> le fiz<sup>8</sup> entra come fitz et heir lautre soer aliena sa purpartie a les autres nomez en le bref.

Et diseiont qe la une parcenere et soer fut morte et diseiont qe cestui William qe ore porte etc. fut en Gasconie<sup>9</sup> nient sachant de la mort soun pere taunt qe a la fin de xx. aunz apres lalienacioun qil vint et se mist en les tenementz dont soun pere morust seisi sur la seisine les enfautz qe apres la mort lour pere furunt entrez come heirs et prirent aide de court.

SPIG. trove est par assise qe Jurdan morust seisi de ceux tenemenz et apres sa mort entrerent deus filies et alieront les feffez morirent seisz <sup>10</sup>et lour fiz<sup>11</sup> qe ore sont nomez disseisours entreront come heirs et cestui William entra sur eux e <sup>12</sup>le osterent<sup>13</sup> par quei attendez vos jugementz etc.

<sup>1-1</sup> from  $\epsilon$ . <sup>2</sup> pour  $\delta$ . <sup>3-3</sup> deyve assise aver  $\epsilon$ . <sup>4-4</sup>  $\epsilon$  omits. <sup>5</sup> Reported by  $\alpha$ ,  $\alpha\alpha$ ,  $\beta$ ,  $\gamma$ ,  $\delta$  and  $\epsilon$ . Text of (I) from  $\alpha$  collated with  $\beta$ . The note in  $\alpha\alpha$  and  $\beta$  is:—Novele diseisine ou le feilles entrerent les tenementz apres la mort lour pere le fitz eine fust hors de pais xx. aunz et revint et se mist einz. <sup>6</sup>  $\beta$  adds meme. <sup>7-8</sup> from  $\beta$ ;  $\alpha$  omits. <sup>9</sup> Wascon  $\beta$ . <sup>10-11</sup> from  $\beta$ ;  $\alpha$  omits. <sup>12-13</sup> eux losterent  $\beta$ .



Agnes. By that surrender Agnes was, consequently, possessed of her original estate as in right of her heritage, and we tell you that this John came, upon the death of his father, and wanted to abate himself in these same tenements, and we would not suffer him to do so. Judgment whether by reason of such abatement assize ought to pass.

*Ingham.* John our father was solely seised in his own demesne as of fee and right and he died seised. Upon his death we entered as his son and heir, and were seised until we were disseised by Agnes etc.

STAUNTON J. to *Westcote*. He makes you sufficient answer. Therefore let the assize come.

## HAYES v. LEFEVRE.

### I.

Novel disseisin where the plaintiff was beyond sea when his father died. His sisters entered and alienated, and afterwards he entered upon the seisin of the heirs of his sister's feoffees.

William the son of Jordan Hayes brought an assize of novel disseisin against John, the son of John Lefevre, and one Maud. These made default, and the assize was therefore awarded. It said that one Jordan Hayes, William's father, died seised of these tenements in his own demesne as of fee, and that upon his death two daughters entered as one heir and divided the tenements between them. Maud, one of the parceners, alienated her share to one John Lefevre, the father of this John against whom this assize is brought. John the father died, and John the son entered as son and heir. The other sister alienated her share to the others named in the writ.

And they said that one parcener and sister was dead; and they said that this William who now brings etc. was in Gascony, knowing naught of the death of his father, for twenty years after the alienation, when he came and put himself in the tenements of which his father died seised upon the seisin of the infants who had entered as heirs upon their father's death; and they<sup>1</sup> prayed assistance from the court.

SPIGURNEL J. The assize has found that Jordan died seised of these tenements, and that two daughters entered after his death and alienated. The feoffees died seised, and their sons, who are now sued as disseisors, entered as heirs; and this William entered against them and they ejected him. Wherefore abide your judgments.

<sup>1</sup> *i.e.* the assize, who find a special verdict.

II.<sup>1</sup>

Un Jon <sup>2</sup>le fitz Willem<sup>2</sup> porte assise de novel disseisine vers Adam de B. et Richard de E. <sup>3</sup>e se pleynt estre disseisi<sup>3</sup> de ij. acres de terre etc. Adam respond com tenaunt dune acre Richard dune autre et disoient qil navoient fet nul tort. Lassise dit qe Willem pere J. qi porte ceste assise avoit <sup>4</sup>un fitz videlicet mesme<sup>4</sup> cesti Jon <sup>5</sup>qi porte ceste assise<sup>5</sup> et iij. filles. W. morust seisi de ceus tenementz en quel <sup>6</sup>temps cesti<sup>7</sup> son fiz<sup>8</sup> fust outre mier <sup>9</sup>par qey<sup>9</sup> les iij. soers entrerent com heirs apparauntz et alierent a les pieres les enfauntz qe ore respondent com tenauntz et disoient qe les ij. soers furent mortz et la terre en vye qi fust nommee en le bref et disoient qe xx. aunz apres lalienacioun vynt Jon <sup>10</sup>qy ore se pleynt a lostel<sup>11</sup> et se mist einz sur la seisine les enfauntz <sup>12</sup>qe furent entrez apres la mort lur peres<sup>12</sup> et eux le osterent et prirent <sup>13</sup>leur eides et atend leur jugement.<sup>13</sup>

*Westcote* et *Pas.* disoient qe si un estraunge<sup>14</sup> fust<sup>15</sup> abatu<sup>16</sup> apres la mort W. pere cesti Jon <sup>17</sup>qi porte ceste assise<sup>17</sup> et les files usent portez le mortdauncestre et lassise ust dit qe leur pere morust seisi et usent dit qe mesme celi W. avoit un fitz qi feust outre miere <sup>18</sup>il disoient<sup>18</sup> qe nul justice les eust chace a dire le quel il fust mort ou vyf mes en tiel cas <sup>19</sup>covendre <sup>20</sup>a garder<sup>21</sup> la seisine a les filles sur tiele condicioun qe si leur frere revenist apres qil ust son heritage et en ceo cas<sup>22</sup> sil ust revenuz il pout bien estre entre etc. mes a entrer<sup>23</sup> ore en ceo cas sur la seisine des purchaceours ne peut il mie a nostre entendement mes il covent estre a sa accioun etc.

Pendet.<sup>24</sup>

NOTA.<sup>25</sup>

Si gardeine print feffement denfaunt deinz age taunt com il est en sa garde lenfaunt portera lassise <sup>26</sup>de novele diseisine<sup>26</sup> et serra agarde un diseisour et le gardein irra a la prison sil soit laa [*sic*].

NOTA.<sup>27</sup>

Nota qe si gardein preigne quiteclamaunce de cely qest en sa garde il serra dit pour disseisour et irra a la prisone par jugement.

<sup>1</sup> Text of (II) from  $\gamma$  collated with  $\delta$  and  $\epsilon$ . <sup>2-2</sup> from  $\delta$ . <sup>3-3</sup> from  $\epsilon$ ; etc.  $\gamma$ . <sup>4-4</sup>  $\epsilon$  omits. <sup>5-5</sup>  $\delta$ ,  $\epsilon$  omit. <sup>6-7</sup> tenementz pur ceo qe lavantdit  $\delta$ . <sup>7-8</sup> from  $\epsilon$ . <sup>9-9</sup>  $\delta$  omits. <sup>10-11</sup> from  $\epsilon$ ; etc.  $\gamma$ . <sup>12-12</sup> from  $\epsilon$ . <sup>13-13</sup> eide des Justices  $\epsilon$ . <sup>14-16</sup> eust entre  $\delta$ . <sup>15</sup> se ust  $\epsilon$ . <sup>17-17</sup> from  $\delta$ ; etc.  $\gamma$ . <sup>18-18</sup>  $\delta$  omits. <sup>19-21</sup> covendreit agarder  $\epsilon$ . <sup>20-21</sup> granter  $\delta$ . <sup>22</sup>  $\delta$  adds soul. <sup>23</sup> mettre soi eynz  $\epsilon$ . <sup>24</sup> from  $\delta$ . <sup>25</sup> Note from  $\alpha$ ,  $\alpha\alpha$ ,  $\beta$ . Text from  $\alpha$  collated with  $\beta$ . <sup>26-29</sup> from  $\beta$ ;  $\alpha$  omits. <sup>27</sup> Note from  $\alpha$ .

## II.

One John the son of William brings an assize of novel disseisin against Adam of B. and Richard of E. and complains of being disseised of two acres of land etc. Adam replies as tenant of one acre, and Richard as tenant of another ; and they say that they have done no wrong. The assize says that William, the father of John who brings this assize, had a son, to wit, this John who brings this assize, and three daughters. William died seised of these tenements, at which time this son of his was beyond sea, and therefore the three sisters entered as heirs apparent, and they alienated to the fathers of the infants who now answer as tenants ; and these say that two of the sisters are dead, and that the third, named in the writ, is alive ; and they say that twenty years after the alienation John, who now brings his plaint, came to the house and put himself in upon the seisin of the infants who had entered after the deaths of their fathers ; and they ejected him ; and they <sup>1</sup> pray the Court's aid and abide its judgment.

*Westcote* and *Passeley* said that if a stranger had abated himself after the death of W., the father of this John who brings this assize, and if the daughters had brought the mortdancestor and the assize had said that their father had died seised and that this same W. had a son who was beyond sea, then, in those circumstances no judge would have forced them to say whether he was dead or alive, and the seisin would have been adjudged to the daughters upon the condition that their brother should have his heritage if he subsequently returned ; and, in that case, if he had returned, he might very properly have entered etc. ; but we submit that he cannot now, in the present circumstances, enter upon the seisin of the purchasers ; and he ought to be put to his action.

The matter stands over.

## NOTE.

If a guardian take feoffment of an infant within age while he be in his guardianship the infant shall have an assize of novel disseisin ; and the guardian shall be adjudged a disseisor and be committed to prison if he be present.

## NOTE.

Note that if a guardian take a quitclaim from one that is in his guardianship, he shall be held a disseisor and be committed to prison by judgment.

<sup>1</sup> *Sc.* the assize, who return a special verdict, and ask the Court to give it its legal consequences by their judgment.



NOTA.<sup>1</sup>

Nota novel  
diseisine.

Si une assise de novele diseisine soit porte vers plusours et un des nomez respoigne com tenaunt et die qil tient les tenemenz en villeignage dun qe nest paas nome en le bref et demaunde jugement du bref tout soit la verite tiel qe un autre nomee en le bref soit tenaunt le bref se abbatera saunz autre respouns par SPIG.

ABBE DE RUFFORD v. ANON.<sup>2</sup>

Labbe de Rufforde porte lassise vers un Thomas et se pleint estre disseisi de son franc tenement en E. saver de la moite del tonu de tut la journe de la surveillance de seint Edmund de chequene manere de mers dont homme deit tolnu prendre.

*Toud.* sire nous nentendoms mie qe a tiele plainte <sup>3</sup>deivont il<sup>4</sup> estre respondu qe la ou il se pleint <sup>5</sup>estre disseisi<sup>6</sup> de la moite del tolnu de la survielle etc. il dust avoir dit tant de tiel mers et tant de tiel mers et issint avoir mis sa plainte en certeine.

*BERR.* ne covent mie qe le Roi ne le grante point en tiele<sup>7</sup> forme.

*Toud.* uncore ne deit il estre respondu qil se pleint del tolnu de la journe et ne dit mie com de jour de feire ne de marche et dautre part einz ceo qil fust respondu a ceste plainte il lui covendreit mustrer especialte daffirmer ceste chose en sa persone et ceo ne fet il mie dont nous demandoms jugement si assise deive estre.

*Warr.* Il ny ad nul mestier de mostrer especialte qe nous pernomz tut le tolnu jointement tut lan ove vous estre la veille del jour de Seynt Edmund de quoi vous avez lentier qe ceste feire apent a vous et nostre plainte nest forsque de la surveillance mes de tut lan avant et apres sumes nous seisi.

*BERR.* vous avez conu qe vous estes seisi de prendre vostre partie fors en la sourveille e le veille et le jour de Seint Edmund et de ses<sup>8</sup> iij. jours vous ne clamez le tolnu forsque en la sourveille dont vostre plainte ne se estent forsque a une journe et vous apres cele jour des autres jours seisi de vostre partie par quoi il nous semble qe vostre plainte<sup>9</sup> est malveis si vous ne ussez dit qe vous ne ussez rien en dautres journez apres et<sup>10</sup> ceo qe vous fustes ouste de cele journe. Mes vous avez conu le contrarie. Par quoi <sup>11</sup>agard ceste curt qe vous<sup>12</sup> nes preignez rien par vostre bref.<sup>13</sup>

<sup>1</sup> Note from *a*, *aa*, *β*. Text from *a* collated with *β*. The marginal note occurs only in *β*.

<sup>2-4</sup> *deive β*. <sup>5-6</sup> *β omits.* <sup>7</sup> *la β*. <sup>8</sup> *ces β*. <sup>9</sup> *β adds si.*

<sup>10</sup> *β omits.* <sup>11-12</sup> *β omits.* <sup>13</sup> The point apparently is that action *c* could not be brought for a parcel of an indivisible franchise.

## NOTE.

If an assize of novel disseisin be brought against several and one of those named answer as tenant and say that he holds the tenements in villeinage of one who is not named in the writ and demand judgment of the writ, then though it be true that some other who is named in the writ is the tenant, yet the writ shall abate without further answer. *Per SPIGURNEL J.*

Note on  
novel  
disseisin.

THE ABBOT OF RUFFORD *v.* ANON.

The Abbot of Rufford brings the assize against one Thomas, and makes plaint of being disseised of his freehold in E., to wit, of a moiety of the toll received throughout the day before the Eve of St. Edmund from every kind of merchandise which is tollable.

*Toudeby.* Sir, we submit that he ought not to have answer to such a plaint; for there where he complains of being disseised of the moiety of the toll taken on the day before the Eve etc. he ought to have spoken of so much from these wares and so much from those, and so have stated a sum certain in his plaint.

BEREWIK J. It would not be regular for the King to grant him a writ in such a form.

*Toudeby.* He ought not to be answered for another reason; for he complains in respect of the toll taken upon a certain day, and does not say that it was a fair-day or a market-day. And again, before he gets answer to this plaint he ought to produce a specialty granting him this right; and he does not do that. Therefore we ask judgment whether assize ought to come.

*Warrington.* It is not incumbent upon him to show a specialty, for we take the whole toll jointly with you throughout the whole year except upon St. Edmund's Eve, upon which day you have the whole toll, for the fair upon that day belongs to you; and our complaint is only in respect of the day before the Eve; but we are seised of the whole year, both before and after [the fair].

BEREWIK J. You have admitted that you are seised of the receipt of your share of the tolls except upon the day before the Eve and the Eve and the Day of St. Edmund, but you are claiming toll only upon one of these three days, the day before the Eve. Your plaint, then, is in respect of one day only, while you are seised of half the toll on subsequent days; wherefore it seems to us that your plaint is bad if you do not say that you have naught in the subsequent days and that you were ousted of this day. But you have admitted the contrary. Therefore this Court gives judgment that you take naught by your writ.

ANON. v. GODCHER.<sup>1</sup>

Un homme porta un assise de novel diseisine vers un Hamound Godcher e autres. Tous hors pris Hamound responderent par bailiff e dieyunt qe il navoynt rien en les tenemenz ne nul tort et nul diseisine fet. Hamound respondi com tenant de tenemenz e vocha a garantie un A. qe fut prest en court e garanti de grace e mist avaunt un reles de lancestre celi qe porta lassise qe il avoyt relese etc. Lautre dedist le fet e le fet trove nul e la diseisine agarde a se damage de x. li. par qey fut comaunde a vicount de lever le damages. Touz fors pris Hamound navoynt rien par qey le vicount destreint Hamound pour le tout par qey Hamound vient a la court e fist sa suggestioun de ceo qe il fut destreint pour le tout e dist par *Schd.* qe a la comune ley nul homme rendreit damages fors le deseysour e ley especial ne limite nul homme respondre si noun pour son temps e nous ne fumes ne tenant ne disseisour si noun tenant de tenemenz un an par qey nous prioms qe nous seumes descharge.

BER. quidez vous qe si en un diseisine vint furent tenanz e nul de eus navoyt rien si non iij. e le iij. avoyunt asez dount le damages pount estre levez qe il ne seruynt scargez quasi diceret sic e issi est le Statut a entendre etc.

ANON. v. ANON.<sup>2</sup>

En assise de novel disseisine la pleint fust fait de une baile saver a faire somons et attachements en le plus forein leu du counte et a retourner les brefs le roie e issi qe tel jour qil fait recoverier il avoit un blanke paine et un paine bis et un galun de serruois et demi et sa jour il et sa feme mangerent a la table Labbe ou averoient ij. dens.

*Ingham* cest un profit a prendre en autre soile jugement si saunz especialte etc. et estre ceo ceo est un office oue le aprovement etc. et estre ceo nest profit a prendre de jour en jour ou de an en an par quei statute ne li eide pointe et a la comune ley il averoit le quod permittat et qe seroit mention de especialte etc.

*Hengham* si jeo doie prendre glan en vostre bois tut faille vostre bois ij. ans ou iij. e port le quatre an si jeo soi desturbe etc. jeo recoverer per assise auxi a etc.

<sup>1</sup> Reported by  $\beta$  only.<sup>2</sup> Reported by  $\theta$  only.



ANON *v.* GOODYEAR.

A man brought an assise of novel disseisin against Hamond Goodyear and others. All these, except Hamond, answered by bailiff and said that they had naught in the tenements and had done no wrong nor disseisin. Hamond answered as tenant of the tenements and vouched to warranty one A. who was ready in Court and voluntarily<sup>1</sup> warranted and tendered a release of the ancestor of him who brought the assize, [reciting] that he had released etc. The plaintiff denied the deed, and it was found bad; and disseisin was found and ten pounds were awarded to the plaintiff as damages; and the Sheriff was thereupon directed to levy the damages. No one except Hamond had anything; so the Sheriff distrained upon Hamond for the whole. Wherefore Hamond came into court and complained that he had been distrained for the whole; and it was said by *Shardelowe* that at the common law the disseisor alone should pay damages, and the statute<sup>2</sup> provides that no one shall be liable except for his own time. Since we were neither tenant nor disseisor but were only tenant of the tenements for a year we pray that we may be discharged.

BEREWIK J. Do you think that if there were twenty tenants in a disseisin and none but three of them had aught, and those three had sufficient to satisfy a distress for the whole damages, they would not be charged with it?—*inferring that they would be charged*. And the statute must be construed thus etc.

ANON. *v.* ANON.

In an assise of novel disseisin the plaint was in respect of a bailiwick, to wit, of serving summonses and attachments in the most remote parts of the county and of making return to the King's writs, receiving therefor on such days as he made a recovery a loaf of white bread and one of brown bread, and a gallon and a half of beer, and upon his day he and his wife ate at the Abbot's table or had twopence.

*Ingham*. This is a *profit à prendre* in another's soil. Judgment whether without specialty etc. And further, this is an office of profit etc.; and further, the profits are not receivable by the day or by the year, and therefore the statute does not aid him. At the common law he might have the *quod permittat*, but then he would have to show a specialty etc.

*Hengham*. If I be entitled to take acorns in your forest and your forest be barren for two years or for three and be fruitful the fourth year, I shall recover by an assize if I be disturbed etc.<sup>3</sup>; and so here.

<sup>1</sup> That is, he did not force Hamond to summon him by a writ of Warranty of Charter.

<sup>2</sup> Statute of Gloucester, cap. i. (6 Edward I). See Introduction, p. xxvii.

<sup>3</sup> See Statute of Westminster, II. c. 25.

*Inge* il ne montre especialte ne prescription de temps etc. jugement etc.

*Will* mist avant un chartre qe temoigna que un gilbert le chaplein qi avoit la baile en fee li avoit done oue tutz les appovementz etc. et dit qe William fust seisi xx. ans et Gilbert et seo auncestres de tut temps etc.

*Inge*. Labbe purchase la franchise du roie etc. davoit receive e par chartre le roie puis temps de memoir etc. Jugement si prescription etc.

*BER.* nest pas davoit assise de teu profitts en autre soil come de terre et de tenementz qe home ne prist aver nul bref en la chauncellerie a discharge mais de terre home purra aver bref dount duresse seroit de mettre un home en pais de charger sa terre dacun profit qe est encontre comune droit saunz especialte par quei il semble qe sans especialte etc.

#### NOTA.<sup>1</sup>

Nota qe si un home se pleindra de disseisine de resonables estovers il ne dira mie en sa pleint de un profit a prendre saver housebote etc. pur ceo qe resonables estovers sont en non certaine saver en un temps plus et en auter meins mais dautre profitts qe sont en certaine hom dirra de un profit a prendre etc.

De une resonables estovers a prendre housebote et heybote et des novels measons edifier et veiles repariler et denclose et a aider en sale chambre cusigne pestrine et brasine de an du an en ij. acres de bois en N. par vewe de forest ou sauns vewe si casus sit talis a son mes en cele ville come apurtenant a mesmes le mes.

#### ANON. v. ANON.<sup>2</sup>

Un assise de novel disseisine fust porte vers une femme et auters.

*Laufer* la feme est coverte de baron sauer de un John nient nome en le du [*sic*] bref jugement du bref.

*SPIGURNEL* respont ele come tenant qar autrement ele nabatera mie le bref.

*Laufer* si ele fut trove disseisor home car [*sic*] damages vers le baron qe seroit contre ley etc.

tum stetit breue per iudicium.

<sup>1</sup> Note from *θ*.

<sup>2</sup> Reported by *θ* only.

*Ingham.* He shows neither specialty nor prescription of time etc. Judgment etc.

*William* tendered a charter witnessing that one Gilbert the chaplain who had the bailiwick in fee had given it, with all the profits etc. : and said that William had been seised for twenty years, and Gilbert and his ancestors from time immemorial etc.

*Ingham.* The Abbot purchased the franchise from the King etc. <sup>1</sup>and he acquired it by a charter from the King within memory.<sup>2</sup> Judgment whether he can set up prescription.

BEREWIK J. <sup>3</sup>An assize ought not to be had in respect of such profits in another's soil as these, that is, profits to be taken in his land or tenements, in cases where a man could not get a writ from the Chancery to be discharged of them, though in respect of the land itself he would be entitled to a writ. It would be unjust, then, to put a man upon a jury that might charge his land with some *profit à prendre* in contravention of ordinary rights unless a specialty be produced.<sup>4</sup> Wherefore we think that without a specialty etc.

#### NOTE.

Note that if a man complain of being disseised of reasonable estovers, of housebote, for instance, he must not describe it in his plaint as a *profit à prendre*, for reasonable estovers are of variable quantity, being at one time more and at another time less ; but only those profits that are of fixed value are to be described as a *profit à prendre*.

[But in a complaint that he has been disseised] of reasonable estovers [he will lay a right] to take housebote and hedgebote from year to year in two acres of wood in N. by view of the forest, or without view, as the case may be, for the purpose of building new houses or repairing and enclosing old ones, and for repairs in hall, bedroom, kitchen, bakehouse, and brewhouse, in his messuage in that vill, as appurtenant to the same messuage.

#### ANON. v. ANON.

An assize of novel disseisin was brought against a woman and others.

*Laufer.* The woman is *coverte* with a husband, namely, one John, who is not named in the writ. Judgment of the writ.

SPIGURNEL J. Does she answer as tenant, for she will not otherwise abate the writ ?

*Laufer.* If she were found to be a disseisor her husband would be liable in damages, which would be contrary to law etc.

Then the writ was ruled good.

<sup>1-2</sup> The text seems corrupt, and this translation is only conjectural.

<sup>3-4</sup> Here again the text seems cor-

rupt, and a conjectural translation is given.



ANON. v. TOPINEL.<sup>1</sup>I.<sup>2</sup>

Assise nouel disseisine porte deuers plusours touz plederent nul tort etc. W. pleda par baillif qil fut entre apres la mort soun pere come fitz et heir. Lassise dit qe les tenemenz furent lessez a morgage a un nent nome en le breve auant le iour le pleintif paia partie et al jour tendi le remenaunt. Lautre le refusa. Le pleintif entra oue lautre et si W. eut plede en propre persone il eust este agarde disseisour et puis lassise dit qe un des ceux nomez en le breve fut a la disseisine pur quei etc.

Un A. porta une assise de nouel disseisine uers William Topinel Roger Bonet et autres touz estre William vindrent et disoient qil nauoient rien ne rien ne cleimont etc.

William par Baillif dit qe soun pere morust seisi en soun demene etc. apres qi mort il entra come fiz et heir saunz tort etc.

*Walingford.* vostre pere nauoit rien si noun terme de nostre lees apres etc. et seisi sumes tauntqe etc.

Lassise dit qe A. lessa les tenemenz a Esteuene en morgage pur xlvij.s. tauntqe a un certain jur issi qe auant le jour il lui paya xj.s. et une chartre fut fete et baille en owele main a Roger Bonet a jour assis de la paie acounta oue Esteuene et prest fut a rendre le remenaunt. E. dit qil voleit auer lenter ou la terre et parla taunt vers Roger qi auoit liu la chartre apres le iour entra sa terre Esteuene lui ousta.

SPIGURNEL. fut nul nome en le breve a la disseisine.

*Jurours.* noun.

*Walingford.* William aad countreplede et issi disseisour.

SPIGURNEL. il pleda par baillif mes sil eust plede en propre persone autre serreit.

Et puis lassise dit qe Roger fut a la disseisine.

SPIGURNEL. si Esteuene fut en vie et eust countreplede la seisine il eust ale a la prisoun pur sa fausine et le remenaunt de les deners si ad il perdu pur sa fausine si agarde ceste Court.

<sup>1</sup> Reported by a, ð, ζ.

<sup>2</sup> Text of (I) from a.

## ANON. v. TOPINEL.

## I.

Assize of novel disseisin brought against William and several others. All answered that they had done no wrong etc. and William answered by bailiff that he entered as son and heir upon his father's death. The assize said that the tenements were granted on mortgage to one not named in the writ. The plaintiff paid in part before the day assigned and, upon the day, tendered the balance. The other refused it. The plaintiff entered together with the other. If W. had answered in person he would have been adjudged a disseisor. And the assize afterwards said that one of those named in the writ was present at the disseisin. Wherefore etc.

One A. brought an assize of novel disseisin against William Topinel, Roger Bonet and others. All these, except William, came and said that they had naught and claimed naught etc.

William said by his bailiff that his father died seised in his own demesne etc.; and that upon his death he entered as son and heir without wrong etc.

*Wallingford.* Your father had naught but a term by our grant; and upon his death we were seised until etc.

The assize said that A. granted the tenements to Stephen by way of mortgage for forty-eight shillings until a certain day upon the terms that previously to that day A. was to pay Stephen eleven shillings; and a charter was made and delivered to Roger Bonet as to a neutral party. Upon the day appointed for the payment A. paid the instalment to Stephen and was ready to pay the balance. Stephen said he must have either the whole [forty-eight shillings] or the land; and he spoke with Roger, who delivered the charter to him. After the day named A. entered upon his land. Stephen ejected him.

SPIGURNEL J. Was no one that is named in the writ present at the disseisin?

*The jurors.* No.

*Wallingford.* William has counterpleaded and so has made himself a disseisor.

SPIGURNEL J. He pleaded by bailiff. It would have been otherwise if he had pleaded in person.

Afterwards the assize said that Roger was present at the disseisin.

SPIGURNEL J. If Stephen had been alive and had counterpleaded to the seisin he would have gone to prison for his fraud. And he has lost the balance of his money through his fraud. Such is the judgment of this Court.

II.<sup>1</sup>

Assisa en morgage ou fut dit qil avoit rendu le deners devant le jour et dust aver este disseisi sil ust este en propre persone a contrepleder lassise.

Disseisine.

Un assise vint et dit qun Johan lessa sa terre en morgage a un William pour xlvijj.s. a paier a un certain iour et fesoit une chartre simple et la bailla<sup>2</sup> a un R. <sup>3</sup>en owel mayn<sup>3</sup> sur tiel condicion qe sil ne paiast le argent au iour assis qe la chartre fut baillie a W. et qe sil paiast adonqe qe la chartre demourast<sup>4</sup> a Johan et fut de nule force issint qe J. vint deuant le iour de la paie et ly paia xij.s. puis vint a un autre iour deuant le iour assis et ly tend le remenant<sup>5</sup> il ne voleit resceuire sil ne ly voleit paier enterment les xlvijj.s. il ne voleit paier si noun le remenant<sup>5</sup> puis ala W. deuant le iour <sup>6</sup>de la paie<sup>6</sup> a R. et dit qil ly <sup>7</sup>gardera quites des damages<sup>7</sup> sil ly voleit bailler la chartre et il ly bailla la chartre puis vint Johan et se mist en les tenemenz etc. W. lousta et fut le cas tiel qe W. fut mort <sup>8</sup>J. et W. furent entrez com fiz et<sup>8</sup> heirs et fut le bref porte vers eux et plusours.

Et fut demande des Justices<sup>9</sup> si J. et W. furent a la disseisine.<sup>10</sup>

*Lassise* dit Nanyl.

SPIGURNEL <sup>11</sup>auoit entre oblie un qi fut nome en bref quant il demanda ceo et dit a *Wallingford* vous nauez nul disseisor.<sup>11</sup>

*Wallingford*. En tant qe J. et W. ount contreplede nostre title<sup>12</sup> assetz sunt il disseisors.

SPIGURNEL. Vous deissez bien sil ussent estee en propre persone<sup>13</sup> mes il ount countreplede par baillif pur quei etc.

SPIGURNEL. Fut il nul de ceux qe furent nomez en bref <sup>14</sup>a la disseisine fere.<sup>14</sup>

*Lassise*. Sire oyl un B. <sup>15</sup>fut a la disseisine qe est nome en le bref.<sup>15</sup>

SPIGURNEL. Agarde<sup>16</sup> qe J. recouere sa seisine etc.<sup>17</sup> Et puis dit <sup>18</sup>apres le jugement<sup>18</sup> qe les executours W. nauerount iames recoueri <sup>19</sup>de la dette.<sup>19</sup>

<sup>1</sup> Text of (II) from  $\delta$  collated with  $\zeta$ . Head note from  $\zeta$ . <sup>2</sup>  $\zeta$  adds en ovele main. <sup>3-3</sup>  $\zeta$  omits. <sup>4</sup> fut rebailie  $\zeta$ . <sup>5</sup>  $\zeta$  adds de la paie. <sup>6-6</sup>  $\zeta$  omits. <sup>7-7</sup> grantereyt et aquitereit vers tote gent  $\zeta$ . <sup>8-8</sup> et ses ij. fiz entres William et Johan com  $\eta$ . <sup>9</sup>  $\zeta$  adds del assise. <sup>10</sup>  $\zeta$  adds fere ou noun. <sup>11-11</sup> vous navez my disseisor en vostre bref  $\zeta$ . <sup>12</sup>  $\zeta$  adds en courte qe porte recorde. <sup>13</sup>  $\zeta$  adds et eusen contreplede vostre title. <sup>14-14</sup> added from  $\zeta$ . <sup>15-15</sup> from  $\zeta$ . <sup>16</sup> Si agarde la court  $\zeta$ . <sup>17</sup>  $\zeta$  adds et alii in misericordia etc. et I. et W. pro falso clamore quia non fuerunt ad disseisinam factam. <sup>18-18</sup> SPIGURNEL  $\zeta$ . <sup>19-19</sup> a demander le remenant del argent : questio quare  $\zeta$ .



## II.

Assize as to a mortgage where it was said that the mortgagor had paid the money before the appointed day ; and it was held that if the mortgagee had counterpleaded to the assize in person he would, by so doing, have become a disseisor.

An assize came and said that one John demised his land by way of mortgage to one William as security that he would pay forty-eight shillings upon a certain day ; and he made an unconditional bond and placed it in the hands of one R., a neutral party, upon the understanding that if he did not pay the money on the day appointed the bond was to be delivered to W., and that if he did so pay it the bond was to be returned to John and was to be void. Before the day appointed John came and paid William twelve shillings. Then he came upon another day before the day appointed and tendered him the balance ; but William would not receive it unless John would pay him the whole forty-eight shillings. John would pay naught but the balance. Then, previously to the day appointed, William went to R. and said that he would hold him free of damage if he would give him the bond, and R. gave him the bond. Then John went and put himself in the tenements etc. William ejected him ; and now William was dead, and his sons J. and W. had entered as his sons and heirs, and the writ was brought against them and several others.

And the Court enquired whether J. and W. were present at the disseising.

*The Assize* said ' No.'

SPIGURNEL J., forgetting the entry (?) of one who was named in the writ, said to *Wallingford* :—You have no disseisor.

*Wallingford*. Inasmuch as J. and W. have counterpleaded to our title they have sufficiently constituted themselves disseisors.

SPIGURNEL J. What you say would be true if they were here in person, but they have counterpleaded by bailiff ; wherefore etc.

SPIGURNEL J. Was none of those who are named in the writ present when the disseisin was done ?

*The Assize*. Yes, sir, one B. was at the disseisin and he is named in the writ.

SPIGURNEL J. Judgment that J. recover his seisin etc. And, after judgment given, he said that William's executors would never have recovered the debt.

NOTA.<sup>1</sup>

Nota contreplaider de baillif en assise de novel disseisine ne fet mye disseisor.

Par HERVY.

NOTA.<sup>2</sup>

Nota qe un disseisine fust trove par une assise mais yniavoit qe disseisor nome en le bref.

*Waling.* le tenant ad counterplead le assise et issint disseisor.

SPIGURNEL. vous deistes bien sil ust pleade in propria persona mais nous recordoms qil pleda per baillif.

Et puis lassise dit qil yavoit un disseisor en le bref pur quei agarde fust qe le pleintiff recoverisist etc.

NOTA.<sup>3</sup>

Nota qe la ou homme countreplede lassise par necessite de ley sicom si ieo soye entre par le feffement le disseisor et lassise soit porte deuers moi et ies dy qe ieo suy entre par le feffement un A. et nient pas disseisor et demaund jugement du bref et si troue soit par assise le bref se abbatera tiel countrepledour ne fet pas disseisin mes la ou tenaunt countreplede lassise de sa teste demene saunz necessite de ley com si lun parcener countreplede lestat soun parcener ou terme tiegne outre soun terme et countreplede lassise quant il est porte encountre lui ei est acounte pur une disseisine qe nul resoun ly chace a ceo fere.

CARBONELL v. HEYWARD ET WOCHAM.<sup>4</sup>

Assisa venit recognitura si Willelmus filius Walteri de Heyward et Thomas de Wocham<sup>5</sup> iniuste etc. diuerterunt cursum cuiusdam aque in Cherrings ad nocumentum liberi tenementi Willelmi Carbonell in eadem villa proprium etc. Et unde idem Willelmus queritur quod cum aqua predicta directe currere solebat per pratum et pasturam ipsius Willelmi in predicta villa et per<sup>6</sup> superundacionem illius aque predicta pratum et pasturam madificare etc. predictus Willelmus filius Walteri et Thomas cursum aque predictae extra cursum suum diuerterunt per quod idem Willelmus Carbonell pro defectu supradictae undacionis

<sup>1</sup> Note from  $\epsilon$ . <sup>2</sup> Note from  $\theta$ .  
 $\theta$  only. Text from  $\theta$  collated with E.R.

<sup>6</sup> Supplied from E.R.

<sup>3</sup> Note from  $\alpha$ .

<sup>4</sup> Reported by  
<sup>5</sup> Wetchamme E.R.

## NOTE.

Note that one who counterpleads by bailiff in an assize of novel disseisin does not thereby constitute himself a disseisor.

*Per* STAUNTON J.

## NOTE.

Note that a disseisin was found by an assize, but there was no disseisor named in the writ.

*Wallingford.* The tenant has counterpleaded to the assize, and so becomes a disseisor.

SPIGURNEL J. What you say would be true if he had pleaded *in propria persona*, but we have recorded that he pleaded by bailiff.

And afterwards the assize said that there was a disseisor named in the writ, and so judgment was given that the plaintiff should recover etc.

## NOTE.

Be it noted that where one counterpleads to an assize through compulsion of law, as where, for example, I have entered by the feoffment of the disseisor and an assize is brought against me and I say that I have entered by the feoffment of one A. and am not a disseisor and I demand judgment of the writ, and the assize finds in accordance with my counting, the writ will abate and such counterpleading will not be an act of disseisin; but where the tenant counterpleads to the assize from choice and not from necessity of law, as, for example, where one parcener counterpleads to the estate of a co-parcener, or, being a tenant for a term, retains possession beyond his term and counterpleads to the assize when it is brought against him, then such counterpleading will be held to constitute an act of disseisin, for he was under no compulsion so to counterplead.

CARBONEL *v.* HAYWARD AND WICKHAM.

The assize comes to recognise whether William the son of Walter of Hayward and Thomas of Wickham unlawfully etc. diverted the course of a certain stream in Charing to the damage of the freehold of William Carbonel in the same vill etc. and in respect of which the same William complains that whereas the stream aforesaid was used to flow directly through the meadow and pasture of the said William in the aforesaid vill and with its overflow used to irrigate the aforesaid meadow and pasture, the aforesaid William son of Walter and Thomas diverted the course of the aforesaid stream from its channel to the effect



predicte aque proficuum predictorum prati et pasture amisit etc. Et Willelmus filius Walteri et Thomas non veniunt et predictus Willelmus filius Walteri attachiatus est per Iohannem Lory et Thomam Starks ideo ipsi in misericordia et predictus Thomas non est attachiatus eo quod non est inventus ideo capiat Assisa versus eosdem per defaultam<sup>1</sup> Iurati dicunt super sacramentum suum quod predicti Willelmus filius Walteri et Thomas iniuste etc. diuerterunt cursum aque predicte extra rectum cursum suum ad nocumentum liberi tenementi predicti Willelmi Carbonell sicut idem Willelmus Carbonell queritur. Ideo consideratum est quod cursus aque predicte reuertatur ad rectum et antiquum cursum suum ad custus predictorum Willelmi filii Walteri et Thome per uisum recognitorum etc. et quod predictus Willelmus Carbonell recuperet versus eos dampna sua que taxantur per eosdem ad xl.s. et Willelmus filius Walteri et Thomas in misericordia.

### GRAUESENDE v. ATTEPORT.<sup>2</sup>

#### Note from the Eyre Roll.

The issue before the assize was:—Si Radulphus atte Porte Iohannes le feure Iohannes le Clerk Henricus atte Porte et Robertus frater eius et Thomas atte Porte iniuste etc. disseisiuerunt Magistrum Ricardum de Grauesende de libero tenemento suo in Shorne post primam etc. Complaint was made in respect of five plots of land of which the dimensions are given.

Neither Ralph nor any of his co-defendants appeared, but one Thomas Creek answered on their behalf "tanquam eorum balliuus."

The plea was:—pro predicto Radulpho respondet ut tenente cuiusdam placee terre et haie continentis duas pericatas in longitudine et duos pedes in latitudine etc. et dicit quod illa placea terre et haie est quedam diuisa inter terram ipsius Radulphi et terram predicti Magistri Ricardi et quod idem Radulphus et antecessores sui semper hucusque a tempore quo non exstat memoria ibidem succiderunt arbores et ramos usque ad medietatem illius placee unde dicit quod ipse ibidem succidit etc. usque ad medietatem haie predicte absque aliqua iniuria seu disseisina predicto Magistro Ricardo inde facienda etc. Et pro predicto Iohanne le Feure respondet ut tenente cuiusdam placee terre et haie continentis tres partes unius pericate terre et haie in longitudine et duos pedes in latitudine etc. et dicit quod placea illa est quedam diuisa inter terram ipsius Iohannis et terram predicti Magistri Ricardi et quod idem Iohannes et antecessores sui semper hucusque a tempore quo non exstat memoria ibidem succiderunt arbores et ramos usque ad medietatem illius placee unde dicit quod ipse ibidem succidit etc. usque ad medietatem haie predicte absque aliqua iniuria seu disseisina predicto Magistro Ricardo inde facienda etc. Et pro predicto

<sup>1-1</sup> Corrected from E.R. The MS. is corrupt here. <sup>2</sup> Reported by a, δ and ζ. Names of the parties from E.R. Text from δ collated with a and ζ.

that the said William Carbonel has lost the profits of the aforesaid meadow and pasture by loss of the aforesaid irrigation of the aforesaid stream. And William the son of Walter and Thomas do not come; and the aforesaid William the son of Walter was attached by John Lory and Thomas Starks, so these be in mercy. And the aforesaid Thomas was not attached because he could not be found. So an assize is to be taken against them by default. The jurors say upon their oath that the aforesaid William the son of Walter and Thomas unlawfully etc. diverted the course of the aforesaid stream from its proper channel to the damage of the freehold of the aforesaid William Carbonel as the same William Carbonel complains. So judgment is given that the course of the aforesaid stream be restored to its proper and ancient channel at the cost of the aforesaid William, the son of Walter, and Thomas by view of the recognitors etc., and that the aforesaid William Carbonel recover his damages against them, which are assessed by the same recognitors at forty shillings, and that William, the son of Walter, and Thomas be in mercy.

GRAVESEND *v.* PORT.Note from the Eyre Roll—*continued.*

Iohanne le Clerk respondet ut tenente cuiusdam placee terre et haie continentis viginti perticatas in longitudine et duos pedes in latitudine etc. et dicit quod placea illa est quedam diuisa inter terram ipsius Iohannis clerici et terram predicti Magistri Ricardi et quod idem Iohannes clericus et antecessores sui semper hucusque a tempore quo non exstat memoria ibidem succiderunt arbores et ramos usque ad medietatem illius placee. unde dicit quod ipse ibidem succidit etc. usque ad medietatem haie predictae absque aliqua iniuria seu disseisina predicto Magistro Ricardo inde facienda etc. Et pro predictis Henrico et Roberto respondet ut tenentibus cuiusdam placee terre et haie continentis viginti et sex perticatas in longitudine et duos pedes in latitudine etc. et dicit quod placea illa est. quidam diuisa inter terram ipsorum Henrici et Roberti et terram predicti Magistri Ricardi et quod iidem Henricus et Robertus et antecessores sui semper hucusque a tempore cuius non exstat memoria ibidem succiderunt arbores et ramos usque ad medietatem illius placee unde dicit quod ipsi ibidem succiderunt etc. usque ad medietatem haie predictae absque aliqua iniuria seu disseisina predicto Magistro Ricardo inde facienda etc.

Thomas Atteporte appears neither in person not by attorney “ideo capiatur assisa versus eum per defaultam.”

Master Richard’s replication, upon which issue was joined, was :—quod quidam Henricus pater suus obiit seiscitus de omnibus predictis placeis de quibus queritur se disseisiri etc. in dominico suo ut de feodo post cuius mortem idem Magister Ricardus intrauit in placeas illas ut filius et heres ipsius Henrici



## Note from the Eyre Roll—continued.

et inde fuit seisitus ut de libero tenemento suo quousque predicti Radulphus et alii ipsum inde iniuste etc. disseisiuerunt sicut queritur. Et hoc petit quod inquiratur.

The finding of the assize was:—quod predictus Thomas iniuste etc. disseisiuit predictum Magistrum Ricardum de predicta placea terre et haie continente octo perticatas in longitudine et quatuor pedes in latitudine. Et dicunt quod predicti Radulphus Iohannes Iohannes et Robertus iniuste etc. disseisiuerunt predictum Magistrum Ricardum de aliis quatuor placeis terre et haie in visu positis continentibus longitudes predictas sicut predictus Magister Ricardus queritur et duos pedes omnino in latitudine.

Mester Richard de Graveshend porta un assise de nouel disseisine vers Robert Atteport et iiij. autres et se pleint estre disseisi de v. <sup>1</sup>acres<sup>2</sup> de terre dount une place contient tant des perches<sup>3</sup> en longoure et iiij.<sup>4</sup> en leure et un autre place tant et sic de singulis.<sup>5</sup>

*Assele.* les placez qe sunt mys en vewe sunt haies jugement de la pleint.

SPIGURNEL. si les placez qe sunt mis en vewe<sup>6</sup> sunt hayez vous auez mespris vostre pleint<sup>7</sup> et vous poez unqore amendre vostre plainte<sup>8</sup> si vous voillez<sup>8</sup> et pur ceo auisez vous.<sup>9</sup>

*Cant.* donques fesoms nostre pleint de v. <sup>10</sup>acres placez<sup>10</sup> et de haiez pur ceo qil y ad partie de terre et partie des haiez les quels places contentent tant <sup>11</sup>etc. ut supra.<sup>11</sup>

GOLDINGTON. si vous voillez pleindre<sup>12</sup> de terre et<sup>12</sup> des haies il vous couent dire com bien de terre et com bien des hayez par sey.<sup>13</sup>

<sup>14</sup>SPIGURNEL.<sup>15</sup> il ne couent pas il puissent ioindre ensemble assez bien.<sup>16</sup>

*Assele* <sup>17</sup>respond et dit qe chescun de v. respond com tenant de certainz placez par sey de taunt en longoure et taunt en leure et dit pur chescun par sey qe ceux tenemenz mys en vewe sunt diuises et <sup>18</sup>bundes entre les terre<sup>18</sup> Mester R. et pour les uns il dit qe eux et leur auncestres et pour les autres qe eux et leur feffours furent de tut temps seisi de

<sup>1-5</sup> places qe contentent taunt en leure et taunt en longure a. <sup>2</sup> plats ζ.  
<sup>3</sup> pees ζ. <sup>4</sup> tant ζ. <sup>6</sup> pleint ζ. <sup>7-9</sup> pur quei amendez la si vous volez a.  
<sup>8-9</sup> ζ omits. <sup>10-10</sup> places de terre a, ζ. <sup>11-11</sup> en longuere et taunt etc. a.  
<sup>12-12</sup> a omits. <sup>13</sup> quai etc. ζ. <sup>14-16</sup> HARUI Il pout assez bien ioindre ensemble a.  
<sup>15</sup> ζ adds et HERVI. <sup>16</sup> ζ adds par quai etc. <sup>17</sup> From here to the end of the case a reads:—Ceux tenemenz mis en vewe sunt deuises et boundes entre le terres mesme cesti et pur ceo le vous dioms qe eux et leur auncestre furent tut temps seisi de couper ses hayes et pur les autres qe eux et leur feffours soleient etc. ut supra et furent tut temps seisi de couper taunt qe a la moite de celes diuises de une parte et Mestre Richard en la manere dautrepart et issi auoms continue saunz tort fere. Lassise fut demaunde qe dit qil auoient disseisi Mestre Richard etc.  
<sup>18-18</sup> bondes entre lor terre a la terre ζ.



**Note from the Eyre Roll—continued.**

The judgment was :—quod predictus Magister Ricardus recuperet inde seisinam suam, per visum recognitorum et dampna sua que taxantur per eosdem ad uiginti solidatas et predicti Radulphus et alii in misericordia et similiter predictus Magister Ricardus in misericordia pro falso clamore etc.

Note that the reason why Master Richard was amerced was that he had stated that the width of all the plots of which he had been disseised was four feet, while the assize found that the width of only one of them was four feet, and that the width of the other plots was two feet.<sup>1</sup>

Master Richard of Gravesend brought an assize of novel disseisin against Robert Port and four others and made plaint of being disseised of five acres of land, one plot of which contained so many perches in length and four in breadth ; and another plot contained so many ; and similarly of each plot.

*Asshele.* What you have put in view as plots of land are, in fact, plantations. Judgment of the plaint.

SPIGURNEL J. If what you have put in view as plots of land be in fact plantations you have laid your plaint wrongly, and you may now amend your plaint if you like ; and so consider what you will do.

*Cambridge.* Then we make our plaint in respect of five acres consisting of land and plantations, for part consists of land and part of plantations ; the which plots contain so much etc. *as above.*

GOLDINGTON J. If you want to complain in respect of both land and plantations, you must say separately how much land there is and how much plantation.

SPIGURNEL J. He need not do that. He may properly enough join them together.

*Asshele* answers and says that each of the five [defendants] answers as tenant of certain individual plots of such and such dimensions in length and breadth, and on behalf of each of them severally he says that the tenements put in view are divisions and bounds between the lands of Master Richard [and their own lands] and on behalf of some of the defendants he says that they or their ancestors, and on behalf of others that they or their feffours have been from time immemorial seised

<sup>1</sup> *m. 23d.* And note further that the occurrence of a *Nota* in the Rolls is most unusual.

ceo tanqe a la moyte de les deuisez<sup>1</sup> et Mester R. seisi en mesme la manere dautre partie et issint <sup>2</sup>auoient il continue<sup>2</sup> lour seisine saunz tort fere.

pur quei lassise fut demande qe dit qil auoient disseisi <sup>3</sup>Richard sicom il se pleint pur quei etc.<sup>4</sup>

### BAMPTONE v. BOLHAM ET ROYS.<sup>5</sup>

Assise noue  
disseisine.

William de Bamptone porta une assise de nouel disseisine uers Richard de Bolham et Johan de Roys.<sup>6</sup>

Richard respondit et dit qil nad rien en ceus tenemenz sinon ioint oue Margerie sa feme par cete charte etc. sanz qi il ne put oier cete reconisance nient nome en le bref jugement etc.

*Toudebi.* Margerie ne auait rien jour de bref purchase prest etc. super statutum etc.

*Scrope.* si vous veilet user cel respondre uset<sup>7</sup> le ausi com statut<sup>8</sup> le doune sauer qe Richard fut soul tenant le iour etc. issi qe nul altre rien auait<sup>9</sup> forqe ly etc.

*Toudebi.* donqe abaterei ieo mon bref demene qe<sup>10</sup> par mon purchase ieo suppose qe tous nomez en le bref sont tenans et disseisours et si ieo deise qe lez autres ne ussent rien ieo conustreie le contrarie de mon bref.

*Denom.* si ieo usse conu qe un nome en le bref ne <sup>11</sup>fut pas disseisor donqe le bref abatereit mes tot conuse ieo qe un nome fut<sup>12</sup> pas tenant si ieo ey tenant et disseisour<sup>13</sup> le bref est assez bon.

*Toudebi.* Margerie sa feme nauait vnqe rien prest etc.

Et fut ressu a tel issue et bref issi de la garrantie<sup>14</sup> ausi come statutum vet.

### ANON. v. ANON.<sup>15</sup>

En un autre<sup>16</sup> Assise <sup>17</sup>de novel disseisine<sup>18</sup> port devant Sire William Ing le tenant auoit mis auant reles <sup>19</sup>et quiteclame<sup>20</sup> encountre le pleintz qe dedit<sup>21</sup> le fait pur qi comende fut a Visconte <sup>22</sup>qil feit<sup>23</sup> venir les temoignes nomez en le quiteclame a un auter ior a quel

*Pas.* vint<sup>24</sup> pur le tenant et<sup>25</sup> dit qil fut prist etc. de oyer la reconu-  
sance del Assise.

<sup>1</sup> ζ adds dune parte.

<sup>2-2</sup> ount il comune ζ.

<sup>3-4</sup> Mestre Richard et il

recouera etc. ζ.

<sup>5</sup> Reported by η and θ. Text from η collated with ϑ.

<sup>6</sup> Roos ϑ.

<sup>7</sup> usez θ.

<sup>8</sup> sc. Statutum de coniunctim feoffatis, 34 Edward I.

<sup>9</sup> yauoit θ.

<sup>10</sup> qar θ.

<sup>11-12</sup> soit θ.

<sup>13</sup> θ adds en le bref.

<sup>14</sup> θ has garruir.

*Probably both these readings are corruptions of chancellerie.*

<sup>15</sup> Reported by η, θ and κ. Text from θ collated with η and κ.

<sup>16</sup> η and κ omit.

<sup>17-18</sup> η omits.

<sup>19-20</sup> etc. η.

<sup>21</sup> from η and κ. le dit ϑ.

<sup>22-23</sup> de fere η, κ.

<sup>24</sup> η and κ omit.

<sup>25</sup> η and κ omit.

of a half of the divisions and that Master Richard has been similarly seised of the other half ; and that the defendants have continued such seisin without doing wrong.

Thereupon the assize was prayed ; and it said that they had disseised Richard even as he had complained. Wherefore etc.

### BAMPTON *v.* BOLHAM AND ROSS.<sup>1</sup>

William of Bampton brought an assize of novel disseisin against Richard of Bolham and John of Ross.

Assize of novel disseisin.

Richard answers and says that he has naught in these tenements save jointly with Margery his wife, by this charter etc., without whom he cannot hear this recognition, and she is not named in the writ. Judgment etc.

*Toudeby.* Margery had naught on the day the writ was purchased. Ready etc. on the statute etc.

*Scrope.* If you want to use this answer use it as the statute<sup>2</sup> provides, to wit, that Richard was sole tenant on the day etc., so that none other than he had aught etc.

*Toudeby.* Then I shall abate my own writ, for I allege in it that all those named in it are tenants and disseisors, and if I say that the others<sup>3</sup> had naught I shall be saying what is opposed to my writ.

*Denom.* If I were to admit that one of those named in the writ was not a disseisor I should abate the writ ; but though I admit that one of those named was not a tenant, yet, if I have tenant and disseisor, the writ is good enough.

*Toudeby.* Margery his wife never had aught. Ready etc.

And he was received to that issue ; and a writ issued from the Chancery<sup>4</sup> in accordance with the term of the statute.

### ANON. *v.* ANON.

In another assize of novel disseisin brought before Sir William Inge the tenant tendered a release and quitclaim against the plaintiff, who denied the deed. The Sheriff was thereupon directed to have here upon another day the witnesses named in the quitclaim. Upon which day—

*Passeley* came on behalf of the tenant and said that he was ready etc. to hear the recognition of the assize.

<sup>1</sup> Bampton, Bolham and Ross are all in the North of England. (34 Edward I.)

<sup>2</sup> Statutum de coniunctim feoffatis

<sup>3</sup> *Sc.* other than Richard.

<sup>4</sup> See note 14 on opposite page.



*Hert.* a ceo ne deuez auenir qar autre foiz pledastes vous hors de pointe <sup>1</sup>de Assise et sur ceo fumes a issue de plee etc. iugement si ore puisse resortir.

*Pas.* nous sumus prist de oyer le recognisance etc. et <sup>2</sup>vous estes pleintz et portez ceste Assise volez vous lassise ou ne mie et <sup>3</sup>si vous la refusez <sup>4</sup>iugement coment nous deuomz departir.

Et puis lassise fust agarde par iugement etc.

### WILTOUN v. STURRE.<sup>5</sup>

Assisa noue  
disseisine.

Edmond de Wiltoun porta une assise de nouel disseisine uers Symon Sturre.

*Lauf.* respondist com tenant et dit qe a tort porta il cet assise qil est entre par un Rauf nient nome etc. iugement etc. et si troue seit etc. il ad fet nul tort etc.

*Bacoun.* ceus tenemenz furent acun tens en la seisine cete Edmond qi enfeffa un Rauf par qi il dit qil entre sur cele condicion qe si Rauf ne paia a Edmond lez .vj. mars denz un certain tens qe la chartre de feffement fut tenu pur nul et qe bien lireit a Edmond de reentrer sur qele condition la seisine fut liure et pur ceo qe lez deners ne furent pas paies a iour etc. frechement <sup>6</sup>enz ceo qe Symon reson<sup>7</sup> auoit et seisi fut tant qe Symon ly dissaisi et prioms lassise et mist auant le fet Rauf qe ceo testmoigne et le fet fut cel sachent tote genz etc. qe ieo Rauf su tenuz et oblige a Edmond en .vj. mars pur certain tenemenz qe ieo ay de ly purchace ausicom la chartre qil ad de ceo fet purporte a paier a certain iour et si ieo ne face qe la chartre seit nule et bien lista a Edmond de reentrer etc.

*Lauf.* il ad conu qil meme enfeffa Rauf par qi nous sumes entre et le fet qil met auant le testmoigne et il ne put dire qe Rauf demist vnqes pur quei qe le fet et le dreit et le franc tenement qe ly acrust par le feffement hors de sa personne se fut deuester iugement si sur sa conisance deieue assise auer.

*Bacoun.* Ieo ay allege une condicion et prest su de auer qe la seisine fut liure en la foren [*sic*].

SPIGURNEL. vous auet conu qe vous ly eneffates et le fet qe vous auet mis auant le testmoigne coment purret vous donqes par nul fet qe vous purret fere en sa seisine lez tenemenz sans liure entrer quasi diceret nullo modo et postea non prosecutus.

<sup>1-4</sup> *η omits.*      <sup>2-3</sup> *κ omits.*      <sup>5</sup> Reported by *η* only.      <sup>6-7</sup> The text is certainly corrupt here. The translation on the opposite page probably gives the real meaning.

*Hartlepool.* To that you will not be admitted, for you previously pleaded outside the point of the assize, and upon that plea we joined issue. Judgment whether you can now go back.

*Passeley.* We are ready to hear the recognition etc., and you are plaintiffs and bring this assize. Do you want the assize or do you not? And, if you refuse it, we ask judgment how we shall go away.

And then the assize was awarded by judgment etc.

### WILTON v. STURRY.

Edmund of Wilton brought an assize of novel disseisin against Simon Sturry.

Assize of  
novel  
disseisin.

*Laufer* answered as tenant and said that the plaintiff wrongfully brought this assize, for the tenant entered by one Ralph who is not named in the writ etc. Judgment etc. And if it be so found etc. he has done no wrong etc.

*Bacon.* These tenements were at one time in the seisin of this Edmund who enfeoffed one Ralph, by whom the tenant says that he entered, upon the condition that if Ralph did not pay six marks to Edmund within a certain time the charter of feoffment should be void and Edmund should be entitled to re-enter. Seisin was delivered upon this understanding; and, because the money was not paid upon the day etc., <sup>1</sup>Edmund straightway entered, as he was entitled to do, and was seised<sup>2</sup> until Simon disseised him, and we pray the assize. And he tendered Ralph's deed in proof of what he said. And the deed was as follows:—Let all folk know that I, Ralph, am beholden and bound to Edmund in six marks to be paid upon a certain day for certain tenements which I have purchased of him as set out in the charter which he has had made touching this matter, and, if I do not do so, the charter is to be of none effect and Edmund will be entitled to re-enter etc.

*Laufer.* He has admitted that he himself enfeoffed Ralph, through whom we have entered, and the deed which he tenders is proof of that enfeoffment; and he cannot say that Ralph ever so demised as to divest himself of the fee and the right and the freehold which accrued to him by virtue of Edmund's feoffment. Judgment whether, after his admission, he ought to have the assize.

*Bacon.* I have alleged a condition, and I am ready to aver that seisin was delivered subject to that condition.

SPIGURNEL J. You have admitted that you enfeoffed him, and the deed which you tender proves that you did. How, then, can you, by any deed that you can make, enter the tenements during his seisin without having livery? *inferring that in no way could he do so.* And afterwards the plaintiff was nonsuited.<sup>3</sup>

<sup>1-2</sup> See note 6 on opposite page.

<sup>3</sup> This is probably another version of the anonymous case on p. 85.

WALTONE v. BER.<sup>1</sup>

William de Waltone et Margerie sa feme porterent un assise de novel disseisine vers Richard de Ber etc.

*Stoner.* Margerie ne doit <sup>2</sup>en ceste Cort ne en nul auter<sup>3</sup> estre ressu qar ele resseut abite de Noneynes<sup>4</sup> a tiel leu et illoques fust profes iugement etc.

*Waling.* quoi respondez vous a William.

*Stonore.* William et Margerie ussent lur accion en comune dont si nous pussoms reboter lun suffist pur ambedeus qar seuerance<sup>5</sup> ne se purra faire entre eux de lor droit commun.

*Waling.* William est deins age et demande de sa seisine demene ou li suffit a dire seisi et disseisi etc.

*Stonore.* vous usez vostre Accion en comune oue vostre feme en supposant qe saunz li ne serriez ressu et nous auoms dit qe Margerie est profes et ceo sumus prist daverer la ou nous deuoms la quele ne doit ceinz estre ressu iugement si a vous qe uez [*sic*] vostre Accion oue li deuoms respondre.

Et sur ceo fust mande a la Cort chretiene unde questio.

LE ORFEURE v. DOWER.<sup>6</sup>

Assise noue  
Disseisine.

Robert le Orfeure et Johane sa feme porterunt une assise de nouel disseisine uers William Dower.

*Caunt.*<sup>7</sup> assise ne deit estre qar altre fois un Johan qi assingne William est porte une assise de nouel disseisine uers meme celi <sup>8</sup>Robert et altres ou fut troue qe meme<sup>9</sup> Johan fut disseisi par Robert et lez altres pur qei Johan recouera uers euz etc. jugement si sanz title mostrer<sup>10</sup> coment seisi puis cel jugement assise etc.

*Westcote.* qei respondet a Johane.

*Caunt.* si nous pussoms reboter Robert Johane ne auera pas lassise.<sup>11</sup>

*Westcote.* vostre respons ne est pas plein sanz ceo qe vous diet qe Robert respondit com tenant et Johan recouera uers ly com uers tenant et ceo ne diet vous pas jugement etc.

SPIGURNEL. vous ne dedites pas qe vous ne futes troue disseisour par assise sur qei jugement se fit etc. et vous ne poet dire qe vous fustes depus seisi sic agarde court qe vous pernez rien par vostre bref.

<sup>1</sup> Reported by  $\eta$  and  $\theta$ . Text from  $\theta$  collated with  $\eta$ . <sup>2-3</sup>  $\eta$  omits. <sup>4</sup> from  $\eta$ . The corresponding word in  $\theta$  is *souemes* (? *sœurs*). See Fleta, vi, 42. <sup>5</sup> *seueralte*  $\eta$ . <sup>6</sup> Reported by  $\eta$  and  $\theta$ . Text from  $\eta$  collated with  $\theta$ . <sup>7</sup>  $\theta$  omits. <sup>8-9</sup>  $\theta$  omits. <sup>10</sup> *mestrez*  $\theta$ . <sup>11</sup>  $\theta$  adds etc.



WALTON *v.* BEER.

William of Walton and Margery his wife brought an assize of novel disseisin against Richard Beer etc.

*Stonore.* Neither in this Court nor in any other ought Margery to be received ; for in a certain place she received a nun's habit and was there professed. Judgment etc.

*Wallingford.* What do you answer in respect of William ?

*Stonore.* William and Margery have their action in common. If, then, we rebut one of them we sufficiently rebut both, for their common right cannot be divided.

*Wallingford.* William is within age and claims in right of his own seisin, in circumstances where it is sufficient for him to say ' seised and disseised ' etc.

*Stonore.* You brought your action jointly with your wife because you believed that you would not be received without her ; and we have told you that Margery is professed, and we are ready to aver it in the proper place, and she ought not to be received here. Judgment whether we ought to answer you alone who only have right of action jointly with her.

And thereupon the matter was referred to Court Christian ; but the propriety of this is doubtful.<sup>1</sup>

GOLDSMITH *v.* DOWER.

Robert Goldsmith and Joan his wife brought an assize of novel disseisin against William Dower. Assize of novel disseisin.

*Cambridge.* Assize ought not to be ; for at other time one John, whose assignee William is, brought an assize of novel disseisin against this same Robert and others ; and it was then found that that same John had been disseised by Robert and the others, and John therefore recovered against them etc. Judgment whether, without offering proof of his seisin, he can, after that finding, have an assize.

*Westcote.* What do you answer to Joan ?

*Cambridge.* If we can rebut Robert, Joan will not get an assize.

*Westcote.* Your answer is not complete unless you say that Robert answered as tenant and that John recovered against him as against the tenant ; and that you did not say. Judgment etc.

SPIGURNEL J. You do not deny that you were found by assize to be a disseisor, upon which finding judgment was delivered etc., and you cannot say that you have been seised subsequently. Therefore the Court gives judgment that you take naught by your writ.

<sup>1</sup> See *Introduction*, p. xxviii.

Et mirum fuit de ceo qe le pleintif ne se voleit eider de ceo qe le tenant ne fut pas partie a lassise qe fut allegge unde questio sil poit auer voche record et apres la mort le baron la feme sera resceue etc.

ANON. v. BEAUMOND.<sup>1</sup>

Assisa noue  
Disseisine.

Une assise de nouel disseisine fut porte uers La Dame de Beaumont qi mist auant roules et quiteclames encontre le pleintif qi dedit le fet et pur ceo qe lez testemoignies furent de diuers contes la parole fut mande en baunk a certain iour a qel iour la Dame ne vint pas de meintinir la quiteclaim qe ele mist pour barre <sup>2</sup>al assise.<sup>3</sup>

<sup>4</sup>BER. agarde lassise<sup>5</sup> et dit al pleintif qil suist son record a lez justices deuant lez geus lassise arrame etc.

Autre serreit en tel cas en un Mordancestre qe le petit Cape ust este agarde apres aparance par BER. etc.

ANON. v. ANON.<sup>6</sup>

Joynt-  
tenauncy.

Un A. porta un assise de nouel disseisine vers B. de W. et se pleint estre disseisi de <sup>7</sup>son franc tenement etc. et mis en vewe et en sa pleint<sup>7</sup> un mes vj. acres de terre oue les appurtenances en Baukewel.

*Stonore.* B. ne pout a ceste assise atteindre<sup>8</sup> sanz C. sa femme qi se joint oue ly <sup>9</sup>en les tenemenz et par cest fet<sup>9</sup> et mist auant fet qe testmoigne et demanda jugement etc.

*Toudebi.* B. nous conust estre tenuz en v. marz en la court le Roi a paier a un certain jour a quel iour il ne paia pas pur quei A. suist un bref qest appelle elegit sibi liberari etc. issint qe ceste terre dount nous sumus ore pleint nous fut deliuere par estatut<sup>10</sup> auxi com franc tenement. B. soul fesoit ceste reconisanz<sup>11</sup> par <sup>12</sup>quel reconisanz cest<sup>12</sup> execucion <sup>13</sup>a nous<sup>13</sup> liuere jugement si le bref vers ly soul ne <sup>14</sup>seit assetz bon.<sup>14</sup>

*Frisq.* si B. <sup>15</sup>portast un assise soul en son noun demene<sup>15</sup> de ceux tenemenz sanz nomer la femme le bref cherroit auxint de ceste partie.

*Mal.* il semble <sup>16</sup>qil nest pas mester de nomer la femme qar tut fut ele nome en bref et ele recouerist par assise apres la mort soun baroun si

<sup>1</sup> Reported by  $\eta$  and  $\theta$ . Text from  $\eta$  collated with  $\theta$ . <sup>2-3</sup>  $\theta$  omits.  
<sup>4-5</sup> Lassise fut agarde par BER.  $\theta$ . <sup>6</sup> Reported by  $\delta$  and  $\zeta$ . Text from  $\delta$  collated with  $\zeta$ . <sup>7-7</sup>  $\zeta$  omits. <sup>8</sup> respondre  $\zeta$ . <sup>9-9</sup> nent nome en le bref  $\zeta$ . <sup>10</sup> estent  $\zeta$ . <sup>11</sup> from  $\zeta$ ;  $\delta$  has recouerir. <sup>12-12</sup> from  $\zeta$ ;  $\delta$  has cel reson qil soul fesoit. <sup>13-13</sup> est a nous soul  $\zeta$ . <sup>14-14</sup> gist  $\zeta$ . <sup>15-15</sup> soul portast son bref  $\zeta$ . <sup>16-1</sup> (on p. 135) qe son recoverir est auxi bon ou ele nest pas nome com nome qe si il portast son bref sanz nomer la feme et recoverast par assise

It was a strange thing that the plaintiff did not seek to take advantage of the fact that the tenant was not party to the assize alleged against him. It is doubtful whether he would have been allowed to vouch the record. After the husband's death, the wife will be received etc.

ANON. *v.* BEAUMONT.

An assize of novel disseisin was brought against the lady of the manor of Beaumont, who tendered rolls and quitclaims against the plaintiff. He denied the making of these; and, because the witnesses were of different counties, the hearing was remitted into Bank for a certain day. Upon that day the lady did not come to maintain the quitclaim which she had tendered in bar of the assize.

Assize of  
novel  
disseisin.

BEREWIK J. awarded the assize and told the plaintiff that he must sue out the record of what happened before the Justices before whom the assize was arraigned etc.

It would have been otherwise in a mortdancestor, when the petty *cape* would have been awarded after appearance. *Per* BEREWIK J. etc.

ANON. *v.* ANON.

One A. brought an assize of novel disseisin against B. of W. and complained of being disseised of his freehold etc.; and he put in view and in his plaint a messuage of six acres of land with the appurtenances in Bakewell.

Joint  
tenancy.

*Stonore.* B. cannot go before this assize without C. his wife, who holds these tenements jointly with him, and by this deed—and he tendered a deed in proof, and demanded judgment etc.

*Toudeby.* B. acknowledged in the King's Court that he was bound to us in five marks to be paid upon a certain day. He did not pay them upon that day, and A. consequently sued out the writ which is called *elegit sibi liberari etc.*; and so this land, in respect of which plaint is made against us, was delivered to us under the statute<sup>1</sup> as of freehold. B. alone made this recognition, and in virtue of this recognition execution was given to us. Judgment whether a writ against him alone is not good enough.

*Friskenev.* If B. alone were to bring an assize in his own name in respect of these tenements, without joining his wife, the writ would be abated. So now.

*Malmerthorpe.* We submit that there is no need to join the wife, for even if she were named in the writ and A. recovered by assize, yet she will have her recovery after her husband's death equally well whether

<sup>1</sup> Statute Merchant.



auereit il son recouerir auxi bien si ele fut nome com nient nome pur quei il semble qe il ne besoigne mie qele seit nome en bref.<sup>1</sup>

STANTON <sup>2</sup>a *Toudebi*<sup>2</sup> coment auez vous franc tenement.

*Toudebi*. Par estatut par <sup>3</sup>son reconisaunce soulement.<sup>3</sup>

STANTON. Cas de statut ne <sup>4</sup>chalege pas proces donques par<sup>4</sup> comune ley sanz ceo qe proces seit done especial par estatut doune tut fut ceo issint qe vous auez franc tenement par estatut par sa recouerir<sup>5</sup> ceo ne tende mie proces<sup>6</sup> a la comune ley si vous<sup>7</sup> seez ouste mes proces<sup>6</sup> a la comune ley est de <sup>8</sup>purchaser vers homme<sup>8</sup> et sa femme <sup>9</sup>de puis qil<sup>9</sup> sount ioint feffes pur quei etc. et couent<sup>10</sup> qil attendissent lour jugement.<sup>11</sup>

Et puis A.<sup>12</sup> pria conge denquerer meillour bref <sup>13</sup>et habuit<sup>13</sup> et autrement les Justiz eussent abatu le bref <sup>14</sup>qar H. de S.<sup>14</sup> dit qe si un homme enfeffe un autre en tenemenz dount sa femme est ioint tenant et puis le baron disseise meme celly uncore couent il porte son bref sil voille recouerir vers le baroun et vers la femme.

*Toudebi*. Nous sumus en autre cas qar nous auons franc tenement par statut.

SPIGURNEL. Mes vous vserez vostre proces <sup>15</sup>quant a vostre recouerir<sup>15</sup> a la comune ley.<sup>16</sup>

## PESENDENNE v. QUETHERYNTONE.<sup>17</sup>

### Note from the Eyre Roll.

The issue for the assize was :—Si Willelmus de Quetheryntone Iohannes de Omyndenue et Sarra uxor eius Willelmus Barry Thomas de Heuxle Roggerus Reynauld et Willelmus de Kyngefeld iniuste etc. disseisiuerunt Willelmum de Pesendenue et Iulianam uxorem eius de libero tenemento suo in Merseham post primam etc.

Of the named defendants John only appears, through whom "tanquam eorum balliui" the others disclaim all interest and deny any disseisin done by them. John's plea on his own behalf "ut tenens" was :—quod predicti Willelmus de Pesendenue et Iuliana iniuste tulerunt assisam istam versus eum quia dicit quod ipse habuit ingressum in predictum messuagium per predictum Willelmum de Quetheryntone et non per disseisinam. Et pro predicto Willelmo de Quetheryntone dicit quod quidam Willelmus de Queth-

el avera auxi bien recoueri apres sa mort par le cui in vita come si ele ust este nome par quai il sembel qe il ne besoin mie qe ci seit nome ζ. <sup>1</sup> See note 16 on p. 134.

<sup>2-2</sup> ζ omits. <sup>3-3</sup> sa conisanz soul ζ. <sup>4-4</sup> change mie processe qe est done a la ζ.

<sup>5</sup> reconisanz ζ. <sup>6</sup> ζ adds done. <sup>7</sup> ζ adds ne. <sup>8-8</sup> porter le bref vers le baron ζ.

<sup>9-9</sup> la ou il ζ. <sup>10</sup> pus fut comande ζ. <sup>11</sup> jours ζ. <sup>12</sup> la partie ζ. <sup>13-13</sup> from ζ.

<sup>14-14</sup> SPIGURNEL. <sup>15-15</sup> ζ omits. <sup>16</sup> ζ adds si vous voliez recoueri.

<sup>17</sup> Reported by γγ and δ. Names of the parties from E.R.

she be named or not. Wherefore we submit that she need not be named in the writ.

STAUNTON J. to *Toudeby*. How do you get a freehold ?

*Toudeby*. By the mere fact of his recognition under the statute.

STAUNTON J. A statute does not change the process given by the common law unless another process be provided by the statute ; and though you have acquired a freehold by virtue of his recognition under the statute the common law process is not thereby affected if you be disseised ; and the common law process is to purchase a writ against the man and his wife, because they are joint feoffees. Wherefore etc. And they were told they must abide judgment.

And A. prayed leave afterwards to take out a better writ and had it ; otherwise the Justices would have abated the writ, for HERVEY of STAUNTON J. said that if a man enfeoffed another of tenements of which the feoffor's wife was joint tenant, and then disseised his feoffee, the feoffee must, if he wished to recover, bring his writ against both the husband and wife.

*Toudeby*. We are in different case here, for we have a freehold under the statute.

SPIGURNEL J. But you must abide by the common law process for your recovery.

#### PESSENDENNE v. KENARDINGTON.

##### Note from the Eyre Roll—continued.

eryntone pater ipsius Willelmi obiit seisis de predicto messuagio in dominico suo ut de feodo etc. post cuius mortem idem Willelmus intrauit messuagium predictum ut filius et heres predicti Willelmi patris etc. propinquior absque iniuria seu disseisina predictis Willelmo de Pesindenne seu Iuliane inde facienda. Et de hoc ponit se super assisam.

The replication of William and Juliana, was :—quod predictum messuagium aliquo tempore fuit in seisina predicti Willelmi de Quetheryntone filii etc. qui de seisina sua messuagium illud dedit cuidam Alano Pecok de Horsham quondam viro predictae Iuliane et ipsi Iuliane Habendum et tenendum eisdem Alano et Iuliane et heredibus ipsius de corpore suo legitime procreatos imperpetuum. qui quidem Alanus et Iuliana tota vita ipsius Alani et similiter eadem Iuliana post mortem ipsius Alani per donum predictum seisinam suam inde continuauerunt que quidem Iuliana postea se nupsit predicto Willelmo de Pesendenne nunc viro ipsius Iuliane qui similiter inde seisinam per donum predictum continuauerunt. Et inde fuerunt seisis ut de libero tenemento suo quousque predicti Willelmus de Quetheryntone et alii ipsos inde iniuste etc. disseisiuerunt sicut queruntur. Et hoc petunt quod inquiratur per assisam.

Upon this replication issue was joined.

**Note from the Eyre Roll—continued.**

The finding of the assize was :—quod predictum messuagium aliquo tempore fuit in seisinâ predicti Willelmi de Quetheryntone filii etc. qui de seisinâ sua dedit messuagium illud predicto Alano Pecok quondam viro predictæ Iuliane et ipsi Iuliane Habendum et tenendum eisdem Alano et Iuliane et heredibus ipsius Iuliane de corpore suo legitime procreatis imperpetuum Et quod iidem Alanus et Iuliana tota vita ipsius Alani et similiter eadem Iuliana post mortem predicti Alani per donum predictum seisinam suam inde continuauerunt et quod eadem Iuliana postea se nupsit predicto Willelmo de Pesendenne nunc viro ipsius Iuliane et quod iidem Willelmus et Iuliana de messuagio predicto similiter seisinam suam per donum predictum plenarie continuauerunt ut de libero tenemento suo quousque predicti Willelmus de

I.<sup>1</sup>

Un W. pere et Julie porterunt un bref de nouel disseisine vers W. de Q. et S. sa fille et plusours âutres nomez en bref et fut la pleint de un mes et de rien plederent si noun a lassise.

Lassise vint et dit qe W. de Q. en ascun temps fut seisi de cel mees qe hors de sa seisine le dona a un R. P. et Jullie sa femme fille lauandit W. de Q. a auer et tenir al auantdit R. et a ses heirs du corps Jullie engendres par fet de tel couenant qil grantereit a ly ceux tenemenz par fine leue en la court le Roi les queux R. et Jullie porterunt bref de couenant vers lauandit W. de Q. et vindrent a la court pour leuer la fine la quele fine ne poeit estre pour la taille et puis senalerent a loustel et demorerent touz treis en le mees.

Demande fut par le Justiz quant W. entra le quel il entra com seigneur du mees en appliant a ly franctenement ou par conge de R. et de J.

*Lassise.* par conge de R. et de J. et a lour custages demoura et issint demourerent ij. anz. puis R. se lessa mourir W. et J. demourerent ensemble demi an puis ele prist baroun cesti W. qore port etc. pur quei la volunte W. pere chaunga vers Jullie et fesoient une chartre de feffement a un J. et S. sa fille de memes les tenemenz et lauandit W. et J. ousterent et mistrent entz J. et sa fille.

SPIGURNEL. a queu damage.

*Lassise.* a xx.s.

SPIGURNEL. fut la disseisine fait a force et armes.

*Lassise.* nanyl.

SPIGURNEL. pur quei agarde ceste court qe W. et Jullie recouerent lour seisine par vewe des jurours et lour damages qe sunt taxez a xx.s.

<sup>1</sup> Text of (I) from δ.



Note from the Eyre Roll—*continued.*

Quetheryntone Iohannes et Sarra Thomas et Roggerus ipsos inde iniuste etc. disseisuerunt sicut queruntur.

The judgment was :—quod predicti Willelmus de Pesendenne et Iuliana recuperent inde seisinam suam per visum recognitorum et dampna sua que taxantur per eosdem ad viginti solidos et predictus Willelmus de Quetheryntone custodiatur et predicti Iohannes et Sarra Thomas et Roggerus in misericordia : Et similiter predicti Willelmus de Pesendenne et Iuliana in misericordia pro falso clamore versus alios etc.

Postea predictus Willelmus de Quetheryntone fecit finem cum domino Rege pro dimidio marci.<sup>1</sup>

## I.

One William the father [of Julia] and Julia brought a writ of novel disseisin against W. of K. and S. his daughter and several others named in the writ ; and the plaint was in respect of a messuage. The defendants pleaded only to the points of the assize.

The assize came and said that W. of K. was at one time seised of this messuage and that out of his seisin he gave it to one R. P. and Julia his wife, who was daughter of the aforesaid W. of K., by a deed covenanting that he would grant them these tenements by a fine levied in the King's Court, to have and to hold to the aforesaid R. and his heirs born of the body of Julia. The which R. and Julia brought a writ of covenant against the aforesaid W. of K. and came into court to levy the fine but the said fine was not permitted because the estate was in tail. Then they went away to the house and all three abode in the messuage.

The Court enquired whether W., when he entered, entered as lord of the messuage and claiming the freehold or by leave of R. and of J.

*The Assize.* By leave of R. and of J., and he abode there at their charges ; and so they abode for two years. Then R. died, and W. and J. abode together for half a year, when Julia took this W. who now brings etc. for her husband ; and thereupon the feelings of W. the father towards Julia were changed, and he made a charter of feoffment of these same tenements to one J. and S. his daughter ; and ejected the aforesaid W. and J. and put in J. and his daughter.

SPIGURNEL J. At what do you assess damages ?

*The Assize.* At twenty shillings.

SPIGURNEL J. Was the disseisin done by force and arms ?

*The Assize.* No.

SPIGURNEL J. This Court therefore gives judgment that W. and Julia recover their seisin by view of the jurors and their damages, which

<sup>1</sup> m. 6.

Disseisine  
de son  
tenement sur  
fait demene.

et pur ceo qe troue est qe W. de Q. fesoit un fait a J. et S. encontre son primer fait par reson de quel fait pout auer este occision si agarde ceste court qil aile a la prisoun sil seit present et si noun qil seit pris.

II.<sup>1</sup>

Nouel  
disseisine  
ou il entre  
encountre  
son fet  
demene.

William de C. et Luce sa femme porterent une assise de nouel disseisine vers un W. de Westriche et [un] Water et altres etc. Water dit qil auoit fet nul tort ne nule disseisine eynz fut entree par le fait et le feoffement William Westriche ly quel W. respondist et dit qil ne auoit fet nul tort etc.

Lassise vynt et dit qe cesti William fut en ascun temps seisi de mesme les tenementz et enfeoffa cesti William qi porte lassise joynement ou sa fille Luce en fee et les myst en seisine et il furent seisiz bien a xl. jours un couenant fut entre le pierre et eux qil leuereint un fyn de mesme les tenementz en la court le Roy disacord fut entre eux issint qe la fyn ne se leua mes cesti William le pierre vynt apres le xl. jours et entra les tenementz et leynz fut oue sa fille et son baron tant qe son baron morust Et pus longe temps apres la fille prist autre baron pur quei disacord fut entre la fille et son pere pur les biens son baron qi estoit mort pur quei le pierre osta joyntement le baron ou sa fille et prioms vos discrecions.

SPYGURNEL. entra le pierre apres les xl. jours en lez tenementz appropriaunt a luy lez tenementz en reclamant son primer estat ou il entra par lour bone volunte et sustenu fut par euls.

*Lassise.* par lor bone volunte.

SPYGURNEL. fut la disseisine fait a force et as armes.

*Lassise.* nanyl.

Judicium.

SPYGURNEL. pur ceo qe troue est par ceste assise qe W. et L. furent entres par le feffement W. de W. et seisi furent xl. jours paysiblement estre ceo nous auoms agarde qe son entree apres ceo seisine ne poiast la seisine qi fut bone en sey defaire et il entra encountre son fet demene si agarde la court qil recouerint lour seisine etc. et W. a la prisone pur ceo qil entra encountre son fet demene.

<sup>1</sup> Text of (II) from 77.

are assessed at twenty shillings ; and seeing that it has been found that W. of K. made a deed to J. and S. in opposition to his first deed, whereby loss of life might have resulted, this Court gives judgment that he go to prison if he be here, and that he be arrested if not here.

Disseisin from his tenement in defiance of the disseisor's own deed.

## II.

William of C. and Lucy his wife brought an assize of novel disseisin against one W. of West Rype (?) and one Walter and others etc. Walter said that he had done no wrong nor disseisin, but had entered by the deed and feoffment of William of West Rype ; the which William answered and said that he had done no wrong etc.

Novel disseisin where the disseisor entered in defiance of his own deed.

The assize came and said that this William was at one time seised of these same tenements and that he enfeofed this William, who brings this assize jointly with his [the feoffor's] daughter Lucy, in fee, and put them in seisin, and they were fully seised for forty days. An agreement was entered into between the father and them<sup>1</sup> that they should levy a fine in respect of these tenements in the King's Court ; but disputes arose amongst them, with the result that the fine was not levied. After the expiration of the forty days this William the father came and entered upon the tenements and was in possession together with his daughter and her husband until the husband died. And then, long afterwards, the daughter took another husband, whereby disputes arose between the daughter and her father in respect of the goods of her deceased husband ; and the father, in consequence, ejected both the husband and his daughter ; and we pray your assistance.<sup>2</sup>

SPIGURNEL J. Did the father, when he entered upon the tenements after the forty days, claim them as his own by right of his former estate, or did he enter upon them by their permission and was he maintained by them ?

*The Assize.* By their permission.

SPIGURNEL J. Was the disseisin done by force and arms ?

*The Assize.* No.

SPIGURNEL J. Seeing that it has been found by this assize that William and Lucy were enfeofed by the enfeofment of William of W. and had undisturbed seisin during forty days ; and further, seeing that we have ruled that the entry of William of W. subsequently to that seisin could not defeat it, as it was good in its nature, and that he entered in defiance of his own deed, this Court gives judgment that the plaintiffs recover their seisin etc. and that W. go to prison because he entered in defiance of his own deed.

Judgment.

<sup>1</sup> *Sc.* Lucy and her deceased husband.

<sup>2</sup> The assize returns a special verdict and leaves the Court to determine the legal consequences of it.



NOTA.<sup>1</sup>

Nota qe un home fut agarde a la prisoun par Spigurnel pur ceo qil fut troue disseisour encountre son fet demene vt in eodem itinere.

NOTA.<sup>2</sup>

Nota etiam par Spigurnel qe en assise de novel disseisin trove fut par assise qe le tenant avoit disseisi le pleyntif encontre son fait demene et ne a force et armes et il fut aiuge a la prisone.

NOTA.<sup>3</sup>

Quant homme est atteint de disseisine fete deinz la somons del eyre il irra a la prisone.

Nota qe Sire HERVY dit qils poeint doner atteintes de lour power en eyre saunz bref le roi.

NOTA.<sup>4</sup>

Nota<sup>5</sup> qe deseisine fetes<sup>6</sup> duraunt le eyre <sup>7</sup>pouunt estre pledez<sup>8</sup> par bille saunz bref e atteintes sur mesme la disseisine saunz bref de<sup>9</sup> la chauncellerie.<sup>10</sup>

NOTA.<sup>11</sup>

Nota qe celi qe vient a maintenir une disseisine tut ne veigne il qe al primer fait il est tenu disseisor par jugement et si x. ou xii. veignent a une disseisine faire si une de eux soit arme touz seroit tenuz disseisors a force et as formes [*sic*] par jugement a ceo qil apelent a force et as armes nest auter mes vener armie de Hauberkes ou de plate Gambeson ou aketon Launse ou ove sauns de plate ou de calanie ou des autres armes etc.

NOTA.<sup>12</sup>

Nota par SPIGURNEL. Si ij. hommes vieignent armez a un disseisine et ouesqe eux v. ou vj. sanz armez trestouz venent a force et armes et si un garzoun seit maunde pour prendre seisine et pus vieignent gentz pour maintenir cely garzoun en seisine touz sunt disseisours.

<sup>1</sup> Note from *a*.      <sup>2</sup> Note from *δ*.      <sup>3</sup> Note from *γ*.      <sup>4</sup> Note from *a*, *β*, *δ*. Text from *a* collated with *β* and *δ*.  
<sup>5-6</sup> si home seit disseisi de son franctenement *δ*.      <sup>6</sup> fetz *β*.      <sup>7-8</sup> put homme pleder *β*.      <sup>9</sup> en *β*.      <sup>7-10</sup> il auera son bref de nouel disseisin dil chief Justice saunz aler a la Chauncerie. Item si lassise face faux serment nest mester d'auer aillours atteint fors a meme celle Justice. Par SPIGURNEL. Nest my mester qe home eyt patent deuant qui qe le bref eit estee arraine pur ceo qil ount de ceo general garranti *δ*;  
<sup>11</sup> Note from *θ*.      <sup>12</sup> Note from *δ*.

## NOTE.

Note that a man was sent to prison by SPIGURNEL J. because he was found to be a disseisor in defiance of his own deed : as appears in this same Eyre.

## NOTE.

Note, too, that a tenant who was found by assize to have disseised the plaintiff in defiance of his own deed, but not by force and arms, was committed to prison by SPIGURNEL J.

## NOTE.

When a man is convicted of disseisin done since the summoning of the Eyre he shall go to prison.

Note that STAUNTON J. said that the Court could grant attaints of their own authority in Eyre without a writ from the King.

## NOTE.

Note that plaint may be made of a disseisin done during the continuance of the Eyre by bill without a writ ; and attaints upon such disseisins may be had without a writ from the Chancery.

## NOTE.

Note that one who comes in assistance of a disseisor, even though he were not present *ab initio* will be adjudged a disseisor ; and if ten or twelve persons come to commit a disseisin, and one of them be armed, they shall all be adjudged disseisors by force and arms, for to seek assistance from force and arms differs in naught from coming armed with hauberks or plate armour or gambesons<sup>1</sup> or haqueton<sup>2</sup> or with a girdle of plate or a calane<sup>3</sup> or other arms.

## NOTE.

Note by SPIGURNEL J. If two men come armed to a disseisin and there come with these five or six not carrying arms, the whole of them come with force and arms ; and if a servant be sent to take seisin and then other folk come to support such servant in his seisin, they are all disseisors.

<sup>1</sup> A gambeson was a military tunic of leather or thick cloth. See O.E.D. *s.v.*

<sup>2</sup> A stuffed jacket worn under the mail, or plated with mail. See O.E.D. *s.v.*

<sup>3</sup> Defined in Lacombe's *Dictionnaire du vieux langage françois* as *une sorte de sabre*. Neither O.E.D. nor Godefroi notes the word.

TILMANESTONE v. SANDHERST.<sup>1</sup>

## Note from the Eyre Roll.

The issue before the assize was :—Si Iohannes de Sandherst Bertramus Roffyn Willelmus de Meu et Henricus de Rutegh iniuste etc. disseisuerunt Agatham de Tilmanestone de libero tenemento suo in Tilmanestone post primam etc. Et unde queritur quod disseisuerunt eam de tercia parte quarte partis Manerii de Tilmanestone cum pertinenciis etc.

Of the four defendants only John appeared. He answered for the three absentees "tanquam eorum balliuis"; saying that they have naught in the said third part and have done no disseisin etc.

John's plea on his own behalf as tenant was :—quod predicta Agatha nichil iuris clamare potest in predicta tercia parte modo in visu posita et unde queritur se disseisiri quia dicit quod tercia parte illa in seisina cuiusdam Willelmi de Kyrkeby militis existente etc. predicta Agatha remisit et quietum-clamavit de se et heredibus suis predicto Willelmo de Kyrkeby et heredibus suis totum ius et clameum quod habuit in predicta tercia parte cum pertinenciis etc. Et profert inde quoddam scriptum quieteclamancie sub nomine predictae Agathe quod testatur quod predicta Agatha remisit et quietum-clamavit de se et heredibus suis predicto Willelmo de Kyrkeby et heredibus suis totum ius et clameum quod habuit in omnibus terris et tenementis cum pertinenciis que habuit in Tilmanestone Smethetone Barefels Soldone Hamewold Wednesberwe et Sandwyco que ei acciderunt post mortem Rogeri de Tilmanestone fratris sui etc. Cuius scripti Data est apud Stoutyng Die Lune proximo ante festum Translacionis sancti Edwardi Regis Anno regni regis Edwardi vicesimo septimo. Et dicit quod predicta tercia pars modo in visu posita est pars tenementorum in predicto scripto contentorum etc. unde petit iudicium si Assisa ista inter eos fieri debeat etc. nisi predicta Agatha ostendere possit aliquem titulum de tardiore seisina etc.

Agathe<sup>2</sup> de Tilmanston<sup>3</sup> porta une assise de novel disseisin vers un Johan de Sandhurst<sup>4</sup> e plusurs altres<sup>4</sup> e se pleint estre disseisi de la terce partye de la quarte<sup>5</sup> partye del maner de Tilmanstone.

Ston. Johan<sup>6</sup> vous<sup>7</sup> respondit pur tutz<sup>8</sup> forpris ly meymes cum<sup>9</sup> baillif e vous<sup>10</sup> dit qe il ne ount rien etc. ne nul tort<sup>11</sup> etc.<sup>12</sup> e pur ly meymes respondit<sup>13</sup> cum tenant e vous<sup>14</sup> dit qe assise ny deit estre quare<sup>15</sup> ele meymes en la seisine William de Kyrkeby<sup>16</sup> releessa e quiteclama tut son droit etc. par cest fet. Juggement etc.<sup>17</sup>

Pass. fetez vous privez<sup>18</sup> a William de Kyrkeby.

Thod. <sup>19</sup>il ne ad pas meister quare il tenant des tenementz.<sup>19</sup>

<sup>1</sup> Reported by δ, ε and ζ. Text from ε collated with δ and ζ. Names of the parties from E.R. <sup>2</sup> A. δ; Agate ζ. <sup>3</sup> C. δ; Tilmaston ζ. <sup>4-4</sup> etc. ζ. <sup>5</sup> iiiij<sup>16</sup>. δ. <sup>6</sup> δ omits; John ζ. <sup>7</sup> δ, ζ omit. <sup>8</sup> tenanz δ. <sup>9</sup> ζ adds par. <sup>10</sup> δ, ζ omit. <sup>11</sup> δ, ζ add ne ount. <sup>12-17</sup> judgement δ. <sup>13</sup> respond δ. <sup>14</sup> ζ omits. <sup>15</sup> qar ζ. <sup>16</sup> kirbebi ζ. <sup>18</sup> priue δ, ζ. <sup>19-19</sup> Nest pas mester qar il nest pas tenant du tenement δ, ζ.



TILMANSTONE *v.* SANDHURST.

*Note from the Eyre Roll—continued.*

Agatha's replication was:—quod post confeccionem predicti scripti quedam Florencia soror ipsius Agathe fuit in seisina de predicta tercia parte unde modo se queritur disseisiri in dominico suo ut de feodo post cuius mortem eadem Agatha intrauit in illam terciam partem ut soror et heres ipsius Florencie etc. et inde fuit seisita ut de libero tenemento suo quousque predicti Iohannes et alii ipsam inde iniuste etc. disseisiuerunt sicut queritur. Et hoc petit quod inquiratur per assisam etc.

John's rejoinder, upon which issue was joined, was:—quod post confeccionem predicti scripti predictus Willelmus de Kyrkeby de seisina sua dedit predictam terciam partem modo in visu positam una cum aliis tenementis etc. predicte Florencie et cuidam Iohanni de Sandherst fratri ipsius Iohannis cuius heres ipse est habendam et tenendam eidem Florencie et Iohanni fratri etc. et heredibus ipsius Iohannis imperpetuum. Et profert quamdam cartam sub nomine ipsius Willelmi que hoc testatur etc. Et dicit quod predicta Florencia nunquam post confeccionem predicti scripti aliquid aliud habuit in predicta tercia parte nisi liberum tenementum ad vitam suam tantum ex dimissione predicti Willelmi ut predictum est unde dicit quod predicta Florencia soror etc. nunquam post confeccionem predicti scripti quietclamata fuit in seisina de predicta tercia parte in dominico suo ut de feodo sicut predicta Agatha dicit. Et de hoc ponit se super Assisam.

The finding of the Assise was:—quod predicta Florencia soror predicte Agathe tenuit predictam terciam partem die quo obiit ad terminum vite sue tantum. Et quod predicta Agatha nunquam fuit in seisina de predicta tercia parte ut de libero tenemento suo ita quod inde potuit disseisiri.

The judgment was:—quod predicti Iohannes de Sandherst et alii inde sine die Et quod predicta Agatha nichil capiat per assisam istam set sit in misericordia pro falso clamore etc.<sup>1</sup>

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Agatha of Tilmanstone brought a writ of novel disseisin against one John of Sandhurst and several others and complained of being disseised of the third part of the fourth part of the manor of Tilmanstone.

*Stonore.* John answers you on behalf of all save himself, as their bailiff, and he tells you that they have naught etc. and have done no wrong etc.; and on his own behalf he answers as tenant and tells you that assize ought not to be, seeing that Agatha herself released and quitclaimed all her right etc. to William of Kirkby, during his seisin, by this deed. Judgment etc.

*Passeley.* Are you making yourselves privy to William of Kirkby?

*Toudeby.* We need not do that, for he is [not] tenant of the tenements.

<sup>1</sup> *m.* 39.

*Cant.* ad idem nous dioms qe vous <sup>1</sup>avez quiteclame<sup>1</sup> a William de Kerkeby par quei si vous ne mustrez<sup>2</sup> coment franc tenement vous soit accru pus <sup>3</sup>ne entendoms mye qe a lassise deyvez avenir.<sup>3</sup>

*Pass.* sire nous vous dioms qe pus la date de <sup>4</sup>la quiteclamance<sup>4</sup> une Florence fust seisie etc. en son demeyne cum de fee e morust seisie. Apres <sup>5</sup>qy mort<sup>5</sup> nous entrames <sup>6</sup>cum seor e heir<sup>6</sup> e seisie fumes tantqe Johan e les altres nous disseisirent e prioms lassise.

*Ston.*<sup>7</sup> dount garantez<sup>8</sup> vous la quiteclamance.

*Pass.* <sup>9</sup>ne covient pas.<sup>9</sup>

*SPIG.* il dit qe Agathe en la seisine William de Kerkeby relessa e quiteclama etc. par quei il covient ceo<sup>10</sup> conustre<sup>11</sup> ou dedire ou nous le tendroms<sup>12</sup> a garante.

*Pass.* Vous tendrez a garante<sup>13</sup> ceo qe vous plect mes nous vous dioms qe <sup>14</sup>pus la confeccion de la quiteclamance<sup>15</sup> Florence nostre seor fust seisie en son demeyne com de fee e morust seisie apres qy mort nous entrames cum <sup>16</sup>seor e heir<sup>16</sup> e seisi fumes tanqe etc.<sup>17</sup>

*Ston.* sire nous<sup>18</sup> dioms qe Roger<sup>19</sup> de Tilmanston fust seisi del maner de Tilmanston<sup>20</sup> en son demeyne cum de fee<sup>21</sup> e morust seisi sanz heir de son corps par quei le maner descendy a v. seors dount ceste Agathe une des seors a cel temps fust en Espoce<sup>22</sup> e Florence e les autres seors entrerent en cel maner e le lesserent a William de Kerkeby par ceste chartre et myst avant une chartre de les iiij.<sup>23</sup> seors e vous dioms qe apres<sup>24</sup> la seisine meyme cesty William meyme ceste Agathe relessa e quiteclama tut son droit qe ele avoit ou aver poeit en les tenementz qe ly descendyrent apres la mort lavantdit Roger<sup>25</sup> son frere e demaundoms jugement si assise <sup>26</sup>deive estre <sup>27</sup>ut supra.<sup>28</sup>

*Pass.* vous avez primes mys avant une quiteclamance<sup>29</sup> pur nous barrer de ceste<sup>30</sup> assise a la quele nous avons respondu. Jugement si a altre respons ou a autre fet <sup>31</sup>user devez estre resceu.<sup>31</sup>

*SPIG.* <sup>32</sup>ceo qe il dit ore <sup>32</sup>e le fet qe il met avant ne est fors affermant son primer dit par quei etc. Estre ceo vous nestes mye partye a <sup>33</sup>la chartre.<sup>33</sup>

*Pass.* syre<sup>34</sup> nous vous dioms qe pus la confeccion de ceste quiteclamance Florence fust seisie <sup>35</sup>en son demeyne cum de fee e morust

<sup>1-1</sup> relessastes ζ. <sup>2</sup> δ, ζ add title. <sup>3-3</sup> jugement δ; vous navendrez mie al assise ζ. <sup>4-4</sup> cele quiteclame δ, ζ. <sup>5-5</sup> ζ omits. <sup>6-6</sup> δ omits. <sup>7</sup> δ omits. <sup>8</sup> grantez δ, ζ. <sup>9-9</sup> Jeo non ay mestre δ; to this ζ adds a conustre. <sup>10</sup> de ζ. <sup>11</sup> mostrer δ. <sup>12</sup> tenoms δ, ζ. <sup>13</sup> grante δ, ζ. <sup>14-15</sup> ζ omits. <sup>15</sup> quiteclame δ. <sup>16-16</sup> etc. δ, ζ. <sup>17</sup> vous nous etc. δ; disseisi par vous et priom lassise ζ. <sup>18</sup> δ, ζ add vous. <sup>19</sup> R. δ; Richard ζ. <sup>20</sup> T. δ; Tilmaston ζ. <sup>21</sup> δ, ζ add et de droit. <sup>22</sup> eschete ζ. <sup>23</sup> iiij. δ. <sup>24</sup> δ, ζ add en. <sup>25</sup> R. δ, ζ. <sup>26-26</sup> etc. δ. <sup>27-28</sup> ζ omits. <sup>29</sup> quiteclame δ, ζ. <sup>30</sup> δ, ζ omit. <sup>31-31</sup> devez avenir δ; vous devez ester resceu ζ. <sup>32-32</sup> ζ omits. <sup>33-33</sup> ceo fait etc. δ, ζ. <sup>34</sup> δ, ζ omit. <sup>35-4</sup> (on p. 141) ut supra et priom lassise ζ.

*Cambridge, ad idem.* We tell you that you have quitclaimed to William of Kirkby ; and, therefore, unless you show how a freehold subsequently accrued to you, we do not understand how you are going to get this assize.

*Passeley.* Sir, we tell you that one Florence was seised etc. in her own demesne as of fee subsequently to the quitclaim and that she died seised. Upon her death we entered as sister and heir, and we were seised until that John and the others disseised us ; and we pray the assize.

*Stonore.* Then admit the quitclaim.

*Passeley.* We need not do that.

SPIGURNEL J. He says that Agatha released and quitclaimed etc. during William of Kirkby's seisin. You must therefore either admit or deny this. Otherwise we shall take it for granted.

*Passeley.* You will take for granted what you please, but we tell you that subsequently to the making of the quitclaim our sister Florence was seised in her own demesne as of fee and died seised, and that upon her death we entered as sister and heir and were seised until that etc.

*Stonore.* Sir, we tell you that Roger of Tilmanstone was seised of the manor of Tilmanstone in his own demesne as of fee and that he died seised, without heir of his body, and that the manor consequently descended to five sisters, of whom this Agatha, being one of the sisters, was at that time married (?) ; and Florence and the other sisters entered upon this manor and granted it to William of Kirkby by this charter—and he tendered a charter of the four sisters—and we tell you that afterwards, [during] the seisin of this same William, this Agatha released and quitclaimed all the right which she had or might have in the tenements which descended to her after the death of the aforesaid Roger her brother ; and we ask judgment whether assize ought to pass as above.

*Passeley.* You have tendered a quitclaim in order to bar us from this assize, to which we have answered. Judgment whether you ought to be received to make another reply or to rely upon another deed.

SPIGURNEL J. What he says now and the deed which he now tenders are only in confirmation of what he said at first. Besides this, you are not party to the charter.

*Passeley.* Sir, we tell you that subsequently to the making of this quitclaim Florence was seised in her own demesne as of fee and died



seisie. Apres qy mort nous entrames cum seor<sup>1</sup> e heir<sup>2</sup> e seisie fumes tanqe<sup>3</sup> etc.<sup>4</sup>

*Ston.* e nous <sup>5</sup>juggement<sup>6</sup> del houre<sup>7</sup> qe vous ne dedites mye <sup>8</sup>la quiteclamance<sup>8</sup> si lassise deivez avenir<sup>9</sup> sanz mustrer tittle coment <sup>10</sup>Florence<sup>11</sup> vostre auncestre avynt<sup>12</sup> pus la quiteclamance.<sup>13</sup>

*SPIG.* a ceo ne ad meister <sup>14</sup>quare si Florence fust seisie en son demeyne cum de fee etc.<sup>14</sup> e morust seisie<sup>15</sup> Agathe purra aver bref de mortdancestre <sup>16</sup>de sa mort.<sup>16</sup> Dount si ele fust eynz<sup>17</sup> apres sa<sup>18</sup> mort<sup>19</sup> ele peot aver<sup>20</sup> lassise.

*Malm.* <sup>21</sup>ad idem<sup>21</sup> tut fust Florence entree par disseisine <sup>22</sup>si ele deviait seisie<sup>22</sup> Agathe averoit<sup>23</sup> le mortdancestre e par consequent lassise etc.

*Ston.*<sup>24</sup> nous conissons bien qe Florence fust seisie apres<sup>25</sup> la quiteclamance<sup>26</sup> mes ceo ne fust fors a terme de sa<sup>27</sup> vye del lees meyme cely William de Kerkeby qy <sup>28</sup>ces tenementz<sup>28</sup> lessa a Florence e a Thomas <sup>29</sup>joyntement e a les heirs Thomas e vous dioms qe meyme cesty Johan de Sandhurst est frere e heir Thomas<sup>29</sup> e myst avant la chartre <sup>30</sup>William de Kerkeby qi cest lees tesmoina.<sup>31</sup>

*Pass.* <sup>32</sup>la ou vous dites qe Florence ne avoit qe terme de vye ut supra nous vous dioms qe ele morust seisie en son demeyne cum de fe<sup>32</sup> prest etc.<sup>33</sup>

*SPIG.* agarda<sup>34</sup> lassise etc. par la quele trove fust qe Florence ne avoit qe terme de vye. Par quei agarde fust qe Agathe ne preist rien etc. eynz etc.

### DU BOIS v. DAGGEWORTH.<sup>35</sup>

Assise nouel  
disseisine.

Une dame de Kent porta une assise de nouel disseisine de libero tenemento et fist sa plainte de la terce partie del profit de tiel baille.

*Denon.* assise ne deit estre qar si vous vendrez en tiel cas a lassise

<sup>1</sup> soeres δ. <sup>2</sup> heirs δ. <sup>3</sup> δ adds par vous. <sup>4</sup> see note 35 on p. 140.  
<sup>5-6</sup> prioms etc. δ. <sup>6-7</sup> depuis δ, ζ. <sup>8-9</sup> δ omits; cel quitelame ζ. <sup>10</sup> atteindre δ, ζ.  
<sup>10-12</sup> frank tenement acrust a vostre auncestre ζ. <sup>11</sup> δ omits. <sup>13</sup> quite-  
clame δ, ζ. <sup>14-14</sup> ζ omits. <sup>15</sup> δ adds etc.; ζ adds ut supra. <sup>16-16</sup> δ omits.  
<sup>17</sup> seisi ζ. <sup>18</sup> la δ, ζ. <sup>19</sup> δ adds et seisi etc.; ζ adds et disseisi. <sup>20</sup> user ζ.  
<sup>21-21</sup> δ, ζ omit. <sup>22-22</sup> et morust seisi δ, ζ. <sup>23</sup> poeit auer δ, ζ. <sup>24</sup> δ, ζ  
add Sire. <sup>25</sup> from δ, ζ; ε has par. <sup>26</sup> quiteclame δ. <sup>27</sup> δ omits.  
<sup>28-28</sup> ceux δ, ζ. <sup>29-29</sup> δ omits. <sup>30-31</sup> W. qe ceo tesmoigne δ, ζ. <sup>31</sup> From  
this point to the end of the case ζ reads:—*Pass.* ut supra et pur ceo qil couendra  
enquerir la verite par assise. *SPIG.* agarda lassise qe dit qe Florence nauoit fors  
qe terme de vie ut supra par quay il ne prist ren par lassise etc. <sup>32-32</sup> F.  
morust seisi en son demene com de fee etc. δ. <sup>33</sup> From this point to the end  
δ reads:—Et pur ceo qil auendreit denquerer la verite par vertu dassise agarde  
Lassise vint et dit qe Florenz nauoit qe terme de sa vie etc., pur quei agarda la  
court qe A. ne preigne rien par lassise einz fut en la mercie. <sup>34</sup> from δ and ζ;  
ε has demaunda. <sup>35</sup> Reported by δ only. Names of parties from E.R.

seised. After her death we entered as sister and heir and we were seised until that etc.

*Stonore.* And, since you do not deny the quitclaim, we ask for judgment whether you ought to get to an assize without showing how Florence your ancestor acquired a title subsequently to the quitclaim.

SPIGURNEL J. He is not bound to do that, for if Florence were seised in her own demesne as of fee etc. and died seised, Agatha can have a writ of mortdancestor upon her death. Consequently, if she were seised after Florence's death she can have the assize.

*Malmerthorpe, ad idem.* Even though Florence had entered by disseisin, yet, if she had died seised, Agatha would have had the mortdancestor, and, consequently, the assize.

*Stonore.* We entirely admit that Florence was seised subsequently to the quitclaim, but such seisin was for the term of her life only by virtue of this William of Kirkby's grant, who granted these tenements to Florence and Thomas jointly and to the heirs of Thomas; and we tell you that this same John of Sandhurst is brother and heir of Thomas—and he tendered the charter of William of Kirkby in proof of this grant.

*Passeley.* Whereas you say that Florence had only a life term *as above*, we say that she died seised in her own demesne as of fee. Ready etc.

SPIGURNEL J. awarded the assize etc.; by which it was found that Florence had only a life term. Wherefore it was adjudged that Agatha take naught etc. but etc.

#### WOOD v. DAGENHAM.<sup>1</sup>

A lady of Kent brought an assize of novel disseisin of a freehold, and made her plaint in respect of the third part of the profits of a certain bailiwick.

Assize of  
novel  
disseisin.

*Denom.* Assize ought not to be; for if in the circumstances you

<sup>1</sup> See Appendix A, p. 212, for the record.

ceo serroit par estatut et statut dit qe homme auereit lassise de profit prendre en certain lieu ou vostre pleint est de noun certain.

HERLE. Ieo vous denie.

profit  
apprendre.

*Scrope.* il y ad assise done par estatut a demander baille et auxint a prendre profit en autri soylle mes en ceo cas la ou homme est seisi du gros il auendra my al assise de les appurtenances.

HERLE. vous dites talent donez les donqe bon bref.

*Denon.* nous ne sumes pas a doner remedie mes dabatre ceste bref dautre part si vous recouerissez ore par assise et autre foitz fussez desturbe par mesme celly et vous portastes la redisseisine qe la execution se fit quai recouerez vous de chos qest en noun certain.

*Scrope.* si vous deuez a ceste assise auenir ceo serreit par comune ley ou par estatut mes par comune ley ned il nul remedie en ceo cas ne par estatut ieo le vous mostre qar lestatut dit de proficuo in certo loco capiendo ut de nucibus glandis et auxi ou un homme deit un annulte de un Maner mes si ieo vous grante un annuelte issant hors de ma chambre ceo est en noun certain pur ceo qe ma chambre demoureit ouesqe moy ou qe ieo sey ou demourge en queu cas lassise ne pout estre nient plus de ceste partie lassise ne pout estre meintenu de profit prendre qest en noun certain.

Et pus fut dit qil ne prist rienz en ceo cas par son bref pur la noun certeinte.

#### ANON. v. ANON.<sup>1</sup>

Un A. se pleint estre disseisi dun mees et de xiiij. acres de terre oue les appurtenances en C.

*Ingham.* assise ne deit estre qar nous vous dioms qun J. vostre pere qi heire vous estes nous enfeffa de ceux tenemenz et obliga ly et ses heires a la garrantie jugement si de ceux tenemenz qe vous garrantiez vers un estranger deuez assise auer.

STANTONE. la ou vous dites qe son auncestre vous enfeffa etc. il prent son title plus tard de sa seisine demene et dit qil fut seisi et disseisi.

*Ingham.* si moun pere me disseise de mes tenemenz ensemblement oue altres et aliene les tenemenz et oblige ly et ses heires a la garrantie

<sup>1</sup> Reported by δ only.



get to an assize it must be under the statute, and the statute says that a man should have an assize in respect of profits to be taken in a place certain,<sup>1</sup> but your plaint is of no certain place.

HERLE J. I do not agree.

*Scrope.* The statute grants an assize where an office is in demand, and also in respect of profits to be taken in another man's soil ; but here, where you are seised of the gross, you will not get an assize for the appurtenances.

Profit &  
prendre.

HERLE J. You are talking at random. Give them a better writ.

*Denom.* We are not here to suggest how this writ should be amended but to abate it. And, besides this, supposing that you were now to recover by assize and were again to be disturbed by this same defendant, and you were to bring a writ of redisseisin and get execution, how are you going to recover what is indefinite ?

*Scrope.* If you are entitled to have this assize it must be either by common law or by statute. But in the present circumstances there is no remedy at common law, nor by statute, as I will show you. The statute speaks of taking profits, as nuts or acorns, in a place certain ; and the case of an annuity charged upon a manor is similar. But if I grant you an annuity issuing from my chamber that is not a place certain, for my chamber is there where I myself happen to be or to be sojourning, and in that case you cannot have an assize. Nor can you, any more, maintain an assize in the present circumstances in respect of a *profit à prendre* to be taken in an uncertain place.

And it was said afterwards that he could take naught by his writ by reason of uncertainty.

#### ANON. v. ANON.

One A. complained of being disseised of a messuage and fourteen acres of land, together with the appurtenances, in C.

*Ingham.* Assize ought not to be, for we tell you that one J. your father, whose heir you are, enfeoffed us of these tenements and bound himself and his heirs to warranty. Judgment whether you ought to have an assize in respect of those tenements which you warranted against a stranger.

STAUNTON J. Whereas you say that his ancestor enfeoffed you etc., A. bases his title upon his own later seisin, and he says that he was seised and disseised.

*Ingham.* If my father and others disseise me of my tenements and my father alienate the tenements and bind himself and his heirs to

<sup>1</sup> Statute of Westminster II, cap. xxv.

ieo auendrai a nul assise en contre la garrantie moun pere apres sa mort saunz ceo qe ieo me puisse fere tittle de plus tard etc.

*Loued.* la ou il suppose qil entra par le fet nostre pere par disseisine prest etc.

STANTONE. respondes al fait.

*Mal.* enlarga son tittle et dit qe soun auncestre morust seisi quel fait qil mette auant apres qi mort entra et seisi fut ci la etc.

STANTONE. nous enquerroms la verite par assise fetes venir lassise et si nous trouoms la verite par assise vostre excepcion vous serra sauue.

#### ANON. v. ANON.<sup>1</sup>

Un A. fut enherite de certeinz tenemenz et auoit ij. fitz lun mulere et lautre bastard le pere morust apres qi mort entrerent ambedeux en le heritage et les tindrent eynz vj. aunz ensemble. Le muliere prist femme et auoit un fitz son fitz ousta son uncle bastard le bastard porta lassise.

*Scrope.* assise ne deit estre qar nous vous dioms qe nostre ael morust seisi de ceux tenemenz apres qi mort nostre pere entra et morust seisi apres qi mort nous sumes entre com fitz et heir et sumes deinz age et demandoms jugement si a lassise deyue avenir saunz mostrer coment franctenement ly seit acru pus la mort etc.

*Malm.* seisi et disseisi et prioms lassise.

*Denom.* quant le tenant se fet tittle en assise de nouel disseisine donqe si le pleintif voille venir a lassise il couent qil se face tittle et noun la ou le tenant est deinz age.

*Frisk.* La ou le tenant en assise de nouel disseisine se fet tittle de chos qe chiet en verdit dassise ceo nest excusacion de son tort et issint sunt il al assise et issint par decea.

BERR. Si vous voillez auer lassise de enfant deinz age qi se fet tittle de droit vous dirrez coment franctenement vous est auenue.

*Herle.* la ou il dit qe son pere moroust seisi et il entra etc. nous vous dioms qe xx. aunz apres la mort son pere nous fuimes seisi et cele seisine continuames tanqe par ly disseisi et prioms lassise.

BERR. Vous auez dit coment vous futes seisi mes il couent qe

<sup>1</sup> Reported by  $\delta$  only.

warranty, I shall get to no assize against my father's warranty after his death, unless I can show a subsequent title etc.

*Loveday.* Whereas he alleges that he entered by our father's deed, we say that he entered by disseisin. Ready etc.

STAUNTON J. Answer the deed.

*Malmerthorpe* affirmed his title, and said that the plaintiff's ancestor died seised, no matter what deeds the defendant tendered, and that after his death the plaintiff entered and was seised there etc.

STAUNTON J. We will enquire of the truth by assize. Call the assize; and, if we find by assize that what you say is true, your exception shall be saved to you.

#### ANON. v. ANON.

One A. was inherited of certain tenements. He had two sons, the one legitimate, the other a bastard. The father died and both the sons entered upon the heritage after his death and remained in possession together for six years. The legitimate son took a wife and had a son, who ejected his bastard uncle. The bastard brought the assize.

*Scrope.* Assize ought not to be, for we tell you that our ancestor died seised of these tenements, and that upon his death our father entered and died seised; and upon his death we entered as son and heir, and we are within age; and we ask judgment whether the complainant ought to get to an assize unless he show how a freehold accrued to him after the death etc.

*Malmerthorpe.* Seised and disseised, and we pray the assize.

*Denom.* When the tenant sets up a title in an assize of novel disseisin then the plaintiff, if he wish to get the assize, must prove his title, but he need not when the tenant is within age.

*Friskenev.* When, in an assize of novel disseisin, the tenant bases his title upon some fact which falls within the recognition of the assize that is not a defence by way of excuse,<sup>1</sup> and both parties must abide the assize; and so here.

BEREWIK J. If you want to get an assize against an infant within age who bases his title upon the right, you must say how a freehold accrued to you.

*Herle.* Whereas the tenant says that his father died seised and that he entered etc., we tell you that we were seised twenty years<sup>2</sup> after the death of his father, and that we continued seised until that we were disseised by him, and we pray the assize.

BEREWIK J. You have said how you were seised, but you must

<sup>1</sup> i.e. he denies any disseisin.

<sup>2</sup> There is apparently some mistake in the text here.



vous dites coment franctenement vous est acru depuis qe lenfant de deinz age se fet title en le droit.

*Herle.* tut vousissoms pleder a son title de droit auxi com trier le prochein du sank lenfant deinz age ne pout my estre partie et dautre part si nous feisons un title et lassise passast et deit coment franctenement fut acru par autre title uncore ieo aueray et recoueray pur quei il me semble qe ne couent my qe ieo face title autre qe lassise ne fera dautrepart si ieo porte bref dentre foundu sur la nouel disseisine ieo ne feray nul title auxint en ceo cas.

*Scrope.* bref dentre port tut le dedire en sey en taunt qil dit quod clamat esse ius et issint ne fet il pas par decea pur quei etc.

*BERR.* pur ceo qe ley de terre est qe en assise de nouel disseisine ou le tenant se fet title de droit le pleintif nauendra my al assise saunz mostrer title coment franctenement ly est acru et lenfant ad fet suffisant title de droit le quel le pleintif ne seet contrepleder ne rien ne mostre a la court qe puisse estat de franctenement en sa persone affermer si agarde la court qil ne preigne rien etc. mes soit en la mercie et lautre saunz iour.

#### PRIOR DE SUTHWERK v. ABBE DE WESTMINSTRE.<sup>1</sup>

Assisa noue  
Disseisine.

Assisa uenit recognitura si Ricardus Abbas Westmonasterii Willelmus Godard Willelmus le Hayward Ricardus le Corder et Radulfus le Shephurde iniuste etc. disseisiuerunt priorem beate Marie de Suthwerk de libero tenemento suo in Westerham post primam etc. et unde queritur quod disseisiuerunt eum de xx. s. redditus cum pertinentiis<sup>2</sup> et unde idem Prior pro titulo liberi tenementi etc. dicit quod quidam Robertus de Kauuille qui aliquo tempore tenuit manerium de Westerham cum pertinentiis<sup>3</sup> unde predictus redditus prouenit per quendam finem in curia domini regis apud Cantuariam in crastino sancti Michaelis anno regni regis H. filii regis I. xxxij. coram Henrico de Bathon et sociis suis iusticiariis itinerantibus leuatum inter quendam Stephanum quondam priorem beate Marie de Suthwerk predecessorem istius prioris querentem et ipsum Robertum de Cauilla etc. per quem finem idem Robertus de C. recognouit et concessit pro se et heredibus suis quod ipsi redderent singulis annis ipsi priori et successoribus suis et ecclesie sue beate Marie de Suthwerk uiginti solidos scilicet ad festum

<sup>1</sup> Reported by  $\epsilon$  only. Text from  $\epsilon$  collated with E.R. from E.R.

<sup>2-3</sup> Supplied

say how a freehold accrued to you, since the infant within age bases his title upon the right.

*Herle.* Even if we wanted to plead to his title in the right, as by contesting his proximity of blood, an infant within age could not be party. And again, if we showed our title and the assize passed and found that a freehold had accrued to us in some other way, I should have and should recover [the tenements]; wherefore I submit that I need not show a title other than the assize may find. And again, if I bring a writ of entry founded upon novel disseisin I need show no title, so here.

*Serape.* A writ of entry comprehends a complete issue in itself inasmuch as it runs 'which he claims as his right'; but that is not the case here, wherefore etc.

BEREWIK J. Seeing that the law of the land<sup>1</sup> is that in an assize of novel disseisin where the tenant pleads a title by right the plaintiff shall not get to the assize without showing by what title a freehold accrued to him, and that the infant has shown a sufficient title by right, to which the plaintiff cannot counterplead nor can show aught to the court that might establish a freehold in his person, the Court gives judgment that he take naught etc. but be in mercy, and that the other go away *sine die*.

#### THE PRIOR OF SOUTHWARK v. THE ABBOT OF WESTMINSTER.

The assize came to recognise whether Richard, Abbot of Westminster, William Godard, William Hayward, Richard Corder and Ralph Shepherd unjustly etc. disseised the Prior of the Blessed Mary of Southwark of his freehold in Westerham after the first etc., and of whom he complains that they disseised him of twenty shillings of rent together with the appurtenances. And touching his title to the freehold the said Prior says that a certain Robert of Cudham, who at one time held the manor of Westerham with the appurtenances thereof, from which the aforesaid rent issues, by a certain fine levied in the Court of our lord the King at Canterbury on the morrow of St. Michael in the thirty-second year of the reign of King Henry the son of King John before Henry of Bath and his fellow Justices of Eyre between a certain Stephen that was once Prior of the Blessed Mary of Southwark and the predecessor of the present Prior, plaintiff, and that same Robert of Cudham etc., acknowledged and undertook for himself and his heirs that they should pay every year to the said Prior and his successors and to his church of the Blessed Mary of Southwark twenty shillings, to wit, five shillings upon the feast of the Nativity of Our Lord and

Assize of  
novel  
disseisin.

<sup>1</sup> *Sc.* the common law.

Natalis Domini v.s. et ad Pascham v.s. et ad festum natiuitatis sancti Iohannis Baptiste v.s. et ad festum sancti Michaelis v.s. et quod si idem Robertus vel heredes sui in persoluacione predicti redditus ad aliquem terminum deficerent bene liceret eidem priori et successoribus suis et ecclesie sue predictae distringere eos per catalla sua in tenementis eorum de Westerham etc. et profert partem predicti finis que hoc testatur etc.

et abbas non uenit set quidam Willelmus de Creye uenit et respondet pro ipso abbate ut balliuus etc. et dicit tam pro domino rege quam pro ipso abbate quod assisa ista non debet procedere in hac parte dicit enim quod dominus E. rex pater domini regis nunc per cartam suam dedit<sup>1</sup> deo et ecclesie Sancti Petri Westmonasterii et Waltero abbati et conventui eiusdem loci predictum manerium<sup>2</sup> cum pertinentiis unde predictus redditus exigitur una cum aliis tenementis etc. pro anima clare memorie Alianore quondam regine Anglie consortis ipsius domini E. regis patris etc. tenendum eisdem ecclesie abbati conuentui et successoribus etc. Ita uidelicet quod iidem abbas et conuentus et successores die sancti Andrei apostoli quolibet anno singulis pauperibus ad domum suam confluentibus unum denarium pro anima eiusdem Alienore facerent erogare et multas alias diversas elemosinas in eadem carta contentas etc. Et profert predictam cartam ipsius domini E. regis patris etc. que hoc testatur etc. unde dicit quod cum predictus abbas teneat predictum manerium oneratum de predictis elemosinis et aliis in predicta carta contentis faciendis et non de predicto redditu etc. quod assisa ista domino rege inconsulto fieri non debet etc.<sup>3</sup>

#### ANON. v. ANON.<sup>4</sup>

Un se pleint estre disseisi dun mees et de xxx. acres de terre etc. un W. respond com tenant et dit qun R. de W. de ceux tenemenz mourust seisi apres qi mort entra un J. com fitz et heir et tent et mourust seisi apres sa mort entra W. com fitz et heir et hors de sa seisine done memes ceux tenemenz a cesti W. et obliga ly et ses heirs a la garrantye cesti H. sabati sur la seisine cesti W. mes il ne ly soeffri pas mes le ousta et demanda jugement si de son abatement sanz mostre title de franc tenement deit a cesti assise atteindre.

<sup>1</sup> E.R. adds pro se et heredibus suis.

<sup>2</sup> E.R. adds de Westerham.

blank space is left on the roll for the completion of the record.

<sup>3</sup> A  
<sup>4</sup> Reported by  $\delta$  only.



five shillings at Easter and five shillings upon the Feast of the Nativity of St. John Baptist and five shillings upon the Feast of St. Michael ; and if the said Robert or his heirs should fail to pay the rent aforesaid at any term, then it should be lawful for the said Prior and his successors and his church aforesaid to distrain them by their chattels in their tenements of Westerham etc. ; and he tendered a part of the aforesaid fine in proof etc.

And the Abbot does not come, but a certain William of Cray comes and answers for the said Abbot as his bailiff etc. and says, as well on behalf of our lord the King as on behalf of the said Abbot, that that assize ought not to pass in the present circumstances ; for he says that our Lord Edward the King, father of our lord the King that is, by his charter gave to God and to the Church of St. Peter at Westminster and to Walter the Abbot and to the convent of the same place the aforesaid manor together with the appurtenances thereof, in respect of which the said rent is claimed, together with other tenements etc. on behalf of the soul of Eleanor of illustrious memory, formerly Queen of England and Consort of our said Lord King Edward the father etc. to hold to the same Church, Abbot, convent and their successors, upon the condition that the said Abbot and convent and their successors should every year upon the day of St. Andrew the Apostle pay to every poor person resorting to their house one penny on behalf of the soul of the said Eleanor ; and do many other works of charity as set out in the same charter etc. And he tenders the aforesaid charter of our said Lord King Edward, father etc., which testifies this etc. ; and in respect thereof he says that since the aforesaid Abbot holds the aforesaid manor charged with the aforesaid charities and others contained in the aforesaid charter, but not with the aforesaid rent, this assize should not be without our Lord the King being consulted.

#### ANON. v. ANON.

One makes plaint that he has been disseised of a messuage and thirty acres of land etc. One W. answers as tenant and says that one R. of W. died seised of these tenements, and that upon his death one J. entered as son and heir and held and died seised, and that upon his death W. entered as son and heir and out of his seisin granted these tenements to this W. and bound himself and his heirs to warranty. This H.<sup>1</sup> abated himself upon this W.'s seisin ; but W. would not submit to this and ejected him ; and he <sup>2</sup> asked judgment whether H. ought to get to an assize upon the strength of this abatement without showing a title to a freehold.

<sup>1</sup> H. must have been the plaintiff.

<sup>2</sup> *Sc.* the tenant or his counsel.

*Stonore.* H. fut seisi com de franc tenement ci la qe par vous disseisi et prioms lassise.

et fut lassise agarde par SPIGURNEL sanz ceo qil se fit tittle pur ceo qil fut deinz age.

Lassise vint et dit qun R. fut seisi de ceux tenementz qe sount en demande ensemblement oue altres qe sunt tenuz en Gauilkind et mourust seisi cesti H. fut son fitz et fut adonqe outre mere. Johan frere H. qi fut en vie entra lentere et prist femme et engendra un fitz W. et fut J. son pere seisi de ceux tenementz puis mourust sa femme tient la moite en noun de dower et lautre moite en noun de nurtoure de lenfant qest deinz age puis prist la femme Baroun meme cesti W. qore respond com tenant.

SPIGURNEL. de quel age est le fitz qi dust auer fet le fet a W. qi respond com tenant.

*Lassise.* nemy de ij. aunz.

Et puis dit lassise qe H. un an apres la mort J. vint aloustel la mort son pere maintenant se mist en les tenementz et clama purpartie et W. losta et prioms vous discrecions.

SPIGURNEL. donqe fut il vj. aunz dela la meer apres la mort son pere nemie sachant sa mort.

*Lassise.* oyl.

SPIGURNEL. si nous agardoms disseisine a ceux damages.

*Lassise.* a xl.s.

SPIGURNEL. attendez vous jugement Lundi prochain apres la Natiuite nostre dame.

A quel iour jugement este done par

SPIGURNEL. quia compertum est per istam assisam quod predictus H. filius R. de W. ad quem spectabat ius propartis sue fuit infra etatem tempore quo posuit se in predictis tenementis tanquam coheres etc. et adhuc est infra etatem per quod videtur Curie quod predicta seisina predicti Iohannis percipiet etc. per tempus predictum continuata ut predictum est eidem H. preiudicari non debet racione minoris etatis sue etc. Ideo consideratum est quod predictus H. recuperet seisinam per uisum recognitorum et dampna sua que taxantur ut supra.

*Stonore.* H. was seised as of freehold until that he was disseised by you, and we pray the assize.

And the assize was awarded by SPIGURNEL J., without H. being made to show any title, and this because he was within age.

The assize came and said that one R. was seised of these tenements which are in demand, together with others, holding them in gavelkind, and he died seised of them. This H. was his son and was at that time beyond sea. John, the brother of H., was then alive and he entered upon the whole of the tenements, and took a wife and begat a son W. ; and J., W.'s father, continued seised of these tenements. Afterwards he died and his wife held the half of them by way of dower and the other half for nurture of the infant who is within age. Then she took another husband, to wit, this W. who now answers as tenant.

SPIGURNEL J. How old is the son who is said to have made the deed to W. who is answering as tenant ?

*The Assize.* Not two years old.

And then the assize said that, a year after J.'s death, H., having learnt of the death of his father, came to the house and entered upon the tenements and claimed a share, and W. ejected him ; and we pray your assistance.

SPIGURNEL J. Then H. was beyond sea for six years after his father's death without knowing of it ?

*The Assize.* Yes.

SPIGURNEL J. If we say it is disseisin, what are the damages ?

*The Assize.* Forty shillings.

SPIGURNEL J. Abide your judgments on the Monday next after the Nativity of Our Lady.

Upon that day judgment was given by——

SPIGURNEL J. Since it has been found by this assize that the aforesaid H. the son of R. of W., who had an expectant interest in his share, was within age at the time when he put himself on the aforesaid tenements as coheir etc. and yet is within age, it therefore appears to this Court that the continuation of the seisin of the aforesaid John during the time aforesaid ought not to prejudice this same H., seeing that he was not of full age etc. ; and it therefore gives judgment that the aforesaid H. recover his seisin by view of the recognitors together with his damages which are assessed as above.<sup>1</sup>

<sup>1</sup> This is possibly another version of *Broomfield v. Broomfield* (pp. 87-89).



## NUPER OBIT.

CROFTE v. CROFTE.<sup>1</sup>

## Note from the Eyre Roll.

Thomas and John, the sons of Thomas of Croft, claim from Peter, the son of Stephen of Croft, certain land in Renham and Upchurch 'ut ius et rationabilem partem suam que eis contingit de hereditate que fuit Roberti de Crofte aui predictorum Thome Iohannis et Petri cuius heredes ipsi sunt et qui nuper obiit etc.'

The count was :—quod predictus Robertus auus etc. fuit seisitus de integro predictorum tenementorum in dominico suo ut de feodo et iure tempore pacis tempore domini Edwardi Regis patris domini Regis nunc capiendo inde expletias ad ualentiam etc. Et de ipso Roberto descendit ius etc. quibusdam Stephano et Thome ut filiis et heredibus etc. eo quod tenementa sunt

I.<sup>2</sup>

La ou fust allege qe il aveient partie en autre ville etc.

Nuper  
obiit.

Un Thomas <sup>3</sup>de B.<sup>4</sup> et Jon son frere portent le nuper obiit vers un Pierre et countent qe a tort lour deforce taunt etc. et dount un Robert ael les avantdit Thomas Jon et Pierre qi heirs ils sount fust seisi etc. dount de Robert descendi<sup>5</sup> etc. a Richard et a Willem com a fitz etc. de Richard descendi etc. de sa purpartie a Thomas et a Jon com a fitz etc. de Willem descend etc. a Pierre com a fitz qe ore tient tut et Thomas et Jon nount rien.

*Stonore* defend et dit qe Willem le pierre Peres fust seisi de mesme ceus tenementz <sup>6</sup>et morust seisi<sup>7</sup> apres qi mort il est eynz com fitz et heir et est denz age et prie son age.

*Malm.* cest nostre <sup>8</sup>comune ancestre<sup>9</sup> et nous vous<sup>10</sup> fesoms heir ousqe nous<sup>11</sup> par qey vous ne devez vostre age atendre.

*Stonore.* en le mortdancestre en tiel cas jeo averey mon age <sup>12</sup>et sic hic.<sup>13</sup>

*Fris.* il me semble qe nous atendroms nostre age qar <sup>14</sup>nous dioms qe<sup>15</sup> nostre pierre <sup>16</sup>fust seisi et<sup>17</sup> morust seisi apres qi mort nous sumes einz ut supra dount nous devons plus tost aver nostre age en ceo cas qe nous averioms si nous usoms dit qe nous fusoms einz<sup>18</sup> apres la mort le<sup>19</sup> ael de qi ils prennent lour title etc. qar en cel cas naveroms pas nostre age.

<sup>1</sup> Reported by a, γ, δ, ε, η, θ and λ. Names of the parties from E.R. <sup>2</sup> Text of (I) from γ collated with δ, ε and λ. Head note from ε. <sup>3-4</sup> λ omits.  
<sup>5</sup> from ε; γ omits. <sup>6-7</sup> λ omits. <sup>8-9</sup> δ; γ has mortdancestre. <sup>10</sup> δ omits.  
<sup>11</sup> vous δ. <sup>12-13</sup> auxi par de cea δ; ausi cy ε. <sup>14-15</sup> from ε. <sup>16-17</sup> δ omits.  
<sup>18</sup> seisi δ. <sup>19</sup> Written in place of nostre by the original scribe.

## NUPER OBIIT.

CROFT *v.* CROFT.Note from the Eyre Roll—*continued.*

partibilia etc. Et de ipso Thoma descendit ius propartis sue prefatis Thome et Iohanni qui nunc petunt ut filii et heredes etc. Et de predicto Stephano descendit ius propartis sue predicto Petro ut filio et heredi qui totum tenet et rationabilem partem suam eis deforcit.

Peter's plea was:—quod non debet eis inde ad hoc breue respondere. Dicit enim quod post mortem predicti Roberti de Croft aui etc. predicti Thomas et Iohannes receperunt quedam tenementa in Middleton de hereditate predicti Roberti communis antecessoris etc. et inde sunt seisisi nomine propartis etc. Et petunt iudicium de breui etc.

Thomas and John could not deny Peter's statement, so they were put into mercy and Peter went away *sine die*.<sup>1</sup>

## I.

Where it was alleged that the demandants had received their share elsewhere.

One Thomas of B. and John his brother bring the *nuper obiit* against one Peter and count that he wrongfully deprives them of so much etc., of which a certain Robert, the grandfather of the aforesaid Thomas, John and Peter, whose heirs these are, was seised etc. From Robert the right descended to Richard and William as his sons etc. Richard's right descended to Thomas and John as his sons etc. William's right descended to Peter as his son; and Peter now holds all and Thomas and John have naught.

*Stonore* denies [etc.] and says that William, Peter's father, was seised of these same tenements and died seised; and that Peter is now in possession, after his father's death, as his son and heir; and he is under age and prays his age.

*Malmerthorpe.* We are bringing this action upon the death of our common ancestor, and we are making you heir along with ourselves, and therefore you ought not to wait till your age.

*Stonore.* I shall have my age in a mortdancestor in similar circumstances, and so here.

*Friskenev.* It seems to me that we ought to await our age, for we tell you that our father was seised and died seised and we are in after his death *ut supra*. We are, then, more entitled to our age in these circumstances than we should be if we had said that we were in after the death of the ancestor from whom they take their title etc., for then we should not have had our age.

<sup>1</sup> m. 55.

HERVI. il vous fount heir ovesques eux par qey<sup>1</sup> respondez<sup>2</sup> <sup>3</sup>outre etc.<sup>4</sup>

*Stonore.* jugement de cesti bref qar nous vous dioms qe Robert nostre aiel avoit tenementz en diverses villes videlicet<sup>5</sup> en B. et C. come lour bref suppose et en D. <sup>6</sup>qele ville nest mie nommee en le bref et vous dioms qe Jon et Thomas sount seisi de les tenementz qe sount en D.<sup>6</sup> qe sount del commun heritage qe fust a Robert nostre ael jugement de cesty bref a qel vous avez counte qe nous tenismes tut et vous navez rien.

*Malm.* nous navoms rien des tenementz en les villes qe nous avoms nome en mesme le bref par qey nostre bref est<sup>7</sup> bon.<sup>8</sup>

<sup>9</sup>SPIGURNEL. il vous dient qe vous avez del heritage.

*Pas.* en bref de dower unde nichil habet homme ne abaterra mie le bref si homme ne peuse dire qe ele eit receu partie de son dower de lui mesme et en mesme la ville aussi en ceo cas mon bref est bon sil ne peuse dire qe nous tenoms partie des tenementz en les villes ou nous fesoms ore nostre demande tut usoms nous<sup>10</sup> en autres villes.<sup>11</sup>

SPIGURNEL. en bref de dower<sup>12</sup> a la commune ley si ele ust receu rien <sup>13</sup>en noun<sup>14</sup> de dower le bref <sup>15</sup>unde nichil habet<sup>16</sup> abatereit mes par statut il est restreint etc. mes vous ne vous poez <sup>17</sup>nient eider<sup>18</sup> par statut dount vous demorez a la comune ley et avez counte qe il ad tut et vous rien et il vous dit qe vous avez partie meyntenez vostre bref.

*Pas.*<sup>19</sup> veut il dire qe nous avoms partie <sup>20</sup>en noun de purpartie<sup>21</sup> en allowaunce dautres<sup>22</sup> tenementz.

*Stonore.* non qar ceo serroit a pleder al accioun mes nous pledoms ore al abatement de bref soulement.

SPIGURNEL.<sup>23</sup> ieo poos qe vos<sup>24</sup> demandauntz<sup>25</sup> feusez emplede<sup>26</sup> des tenementz qe vous tenez vous averiez eide de Pieres com de vostre parcener si vous le priasez par qey etc.

HERVI. ils vous dient qe vous estes seisi de partie del heritage <sup>27</sup>en noun de purpartie. respondez a ceo ou<sup>28</sup> ditez qe vous estes avenu<sup>29</sup> par autre voie etc. <sup>30</sup>qar vous devez saver coment vous tenez les tenementz de ceux vous estes seisi et par quel tittle etc.<sup>30</sup>

*Pas.* ne pout dedire qil ne tynt partie des tenementz en purpartie.

<sup>31</sup>Ideo nichil etc. per idem breve de possessione<sup>31</sup> sed habet breve

<sup>1-2</sup>  $\delta$  omits. <sup>3-4</sup> from  $\epsilon$ . <sup>5</sup> ce est a saver  $\epsilon$ . <sup>6</sup> A.  $\delta$ ,  $\lambda$ . <sup>7</sup>  $\epsilon$  adds assez. <sup>8</sup>  $\delta$  adds sil ne puisse dire qe nous tenoms partie des tenementz en les villes ou nous fesoms nostre demande tut usoms partie etc. en autre ville. <sup>9-11</sup>  $\delta$  omits. <sup>10</sup>  $\lambda$  adds partie. <sup>12</sup>  $\lambda$  adds unde nichil habet. <sup>13-14</sup>  $\delta$  omits. <sup>15-16</sup>  $\lambda$  omits. <sup>17-18</sup> mie estre eide  $\lambda$ . <sup>19</sup> *Malm.*  $\delta$ . <sup>20-21</sup>  $\delta$  omits. <sup>22</sup> de ceuz  $\lambda$ . <sup>23</sup>  $\delta$  adds nanyl. <sup>24</sup> vous  $\delta$ . <sup>25</sup>  $\lambda$  cmits. <sup>26</sup> et enpledez  $\delta$ . <sup>27-29</sup>  $\delta$  omits. <sup>28</sup> vous  $\lambda$ . <sup>30-30</sup>  $\lambda$  omits. <sup>31-31</sup> par quei fust agarde qe il ne prist rien par cestz bref de possession  $\delta$ ,  $\epsilon$ ,  $\lambda$ :



STAUNTON J. They make you heirs with them; so answer over etc.

*Stonore.* Judgment of this writ; for we tell you that Robert our ancestor had tenements in divers villis, to wit, in B. and C., as their writ supposes, and in D., which vill is not named in the writ; and we tell you that John and Thomas are seised of the tenements which are in D., which are part of the common heritage which belonged to Robert our ancestor. Judgment of this writ under which you have counted that we hold everything and that you have nothing.

*Malmerthorpe.* We have naught in the tenements in the villis named in that same writ; wherefore our writ is good.

SPIGURNEL J. They tell you that you have got your share of the heritage.

*Passeley.* In a writ of dower, laying *unde nihil habet*, you cannot abate the writ unless you can say that the wife has received part of her dower from her husband himself and in the same vill. So, in this case, my writ is good if it cannot be said that we hold part of the tenements in the villis in respect of which we now make our demand, even though we hold in other villis.

SPIGURNEL J. A writ of dower at the common law, laying *unde nihil habet*, would abate if the wife had received naught by way of dower, but the statute<sup>1</sup> introduces limitations. But you can get no assistance from the statute, since you are suing under the common law and have counted that Peter holds everything and that you have naught, and Peter answers that you have your share. Support your writ.

*Passeley.* Does he allege that we are holding, by way of our share, some other tenements?

*Stonore.* No; for that would be to plead to the action, and we are now pleading only in abatement of the writ.

SPIGURNEL J. I suggest that if you demandants were to be sued in respect of the tenements you hold you would be entitled to have aid from Peter as your parcener if you asked for it; consequently etc.

STAUNTON J. They tell you that you are seised of part of the heritage in right of your share. Either answer that allegation or say that you hold in some other way etc., for you must know how you hold the tenements of which you are seised and by what title etc.

*Passeley.* He cannot deny that he holds part of the tenements as his share of the heritage.

So he took naught by that same possessory writ, but he may have

<sup>1</sup> Statute of Westminster I. cap. xlix.

de recto etc. quod clamat esse de rationabili parte etc. <sup>1</sup>E fust le castiel qe les tenementz <sup>2</sup>qe ore sount en demande<sup>3</sup> furent en la mayn une Alice qi les tynt a terme de sa vye del lees lour auncestre<sup>4</sup> en temps de la purpartie fete des autres tenementz des queux il sount ore seisi.

<sup>5</sup>*Stonore* dit qe bref de intrusion ne gist pas entre parceners etc.<sup>5</sup>

II.<sup>6</sup>

Nuper obiit bref abatu pur ceo qe le demandant ne poeit dedire qil ne fut seisi de partie del heritage en noun de purpartie en autres viles qe furent nomeez en le bref.

Habeat breue de recto de racionabili parte.

Thomas le fitz Thomas de Croft et <sup>7</sup>Johan soun frere<sup>8</sup> porterent le<sup>9</sup> nuper obiit uers Peres le fitz Esteuene de Croft et demaunderent <sup>10</sup>la moite des certains tenemenz en Renham et Hurst dount lour ael morust saisi ne ad guers etc.<sup>11</sup> et fit sa descente etc. de celui Robert a Esteuene et Thomas com a .ij.<sup>12</sup> fitz et un heir pur ceo qe les tenemenz sount departables<sup>13</sup> de Esteuene<sup>14</sup> descendit le dreit de sa purpartie etc. a <sup>15</sup>Piers <sup>16</sup>uers qy nous demaundom etc. de Thomas descendi le dreit de sa purpartie etc. a Thomas et Johan come a fiz etc. pur ceo qe les tenemenz etc. qe or demaudent etc.<sup>17</sup>

<sup>18</sup>*Stonore*. Pere vous dit qe apres la mort celui Robert qe morust seisi de ceux tenemenz entra Peres come fiz et heir en ceux tenementz et est<sup>19</sup> de deinz age et prie soun age.

<sup>20</sup>*Malm*. ceo est nostre mortdancestre ou nous vous fesom taunt auaunt heir come nous jugement si vous ne deuez respoudre.

*Stonore*. enfaunt dedeinz age ne respoudra paas a la mortdancestre la ou il est entre par descente de heritage auxi semble par decea.

*Malm*. illoec nest paas fet com heir etc. et le mortdancestre voet certain quant des tenemenz et cestui bref ne voet forsque resonable partie del heritage etc.<sup>21</sup>

<sup>1-5</sup> *δ omits.*      <sup>2-3</sup> demandez *ε*.      <sup>3-4</sup> *λ omits.*      <sup>6</sup> Text of (II)  
from *a* collated with *η* and *θ*.      <sup>7-8</sup> Johan frere mesme celi Thomas *θ*.      <sup>9</sup> lur  
bref de *θ*.      <sup>10-11</sup> lour resonable partie qe a euz afferait de le heritage qe fut a  
Robert lour ael en ij. villes *η*, *θ*.      <sup>12</sup> *η*, *θ omits.*      <sup>13</sup> partables *η*, *θ*.      <sup>14</sup> Thomas  
*η*, *θ*.      <sup>15-17</sup> Thomas e a Johan come a fuis qe ore etc. de Esteuene decendi le  
droit de sa purpartie etc. a Pier come a fuis e heire qe ore entient tut e Thomas e  
Johan nont riens etc. *θ*.      <sup>18-17</sup> com a fiz et heir qe ore tint tot et Johan et  
Thomas ne ont rien etc. *η*.      <sup>18-19</sup> *Fris*. Esteuene pere Pers morust seisi etc.  
apres qi mort Pers entra com fiz et heir etc. *η*; *Frisk*. defend etc. et le droit etc.  
et dit qe Esteuene pere Pieres morte seisi etc. apres qi mort Pier entra come fuis  
et heire et est *θ*.      <sup>20-21</sup> *Malm*. nous portoms ceo bref de la seisine nostre ael  
et pus vous fesoms nostre coheir et parcener de meme le heritage et de owel estat a  
nous et cet bref est en lu de mordancestre jugement si vous etc. *θ has the same,*  
*with slight variations, substituting Marleb. for Malm. and devez vostre age aver for*  
*the final etc.*

the writ of right *quod clamat esse de rationabili parte etc.* The fact was that the tenements in demand in this case were in the possession of one Alice who held them for the term of her life by the lease of the parties' ancestor at the time when the division of the other tenements now held by them was made.

*Stonore* said that a writ of intrusion did not lie between parceners etc.

## II.

*Nuper obiit.* Writ abated because the demandant could not deny that he was seised of part of the heritage, as of his share, in other vills named in the writ. He may have a writ of right *de racionabili parte.*

Thomas the son of Thomas of Croft and John his brother brought the *nuper obiit* against Peter the son of Stephen of Croft, and demanded the half of certain tenements in Renham and Hurst of which their ancestor recently died seised. And he made his descent from that [ancestor] Robert to Stephen and Thomas as to two sons and a single heir, the lands being partible. The right in Stephen's share descended to Peter against whom we are bringing our demand etc. The right in Thomas's share descended to Thomas and John as to two sons etc., the lands being partible, who are the present demandants.

*Stonore.* Peter tells you that upon the death of the aforementioned Robert, who died seised of these tenements, he, Peter, entered upon those tenements as son and heir; and he is under age, and he prays his age.

*Malmerthorpe.* We are bringing this action upon the death of our common ancestor, and we are making you heir with ourselves. Judgment whether you ought not to answer.

*Stonore.* An infant under age who has entered by descent will not answer in a mortdancestor; neither, it would seem, ought he to answer here.

*Malmerthorpe.* In the mortdancestor he is not made heir etc.; and the mortdancestor requires that the tenements should be laid definitely; while this writ speaks only of a proportionable share of the heritage etc.



*Frisk.* si nous fussoms entre apres la mort celui<sup>1</sup> de qi<sup>2</sup> vous pernez vostre title puet estre qe nous respoundroms dedeinz age mes ore sumes nous entre apres la mort Stephen pur quei il nous semble qe nous attendroms age.<sup>2</sup>

<sup>3</sup> *SPIGURNEL.* nuper obiit est donee entre parceners denz age et il sount parceners par quei il couient qe vous respoignez.

*Stonore.* cesti bref gist entre parceners a demaunder resonable partie de tut le heritage dount asqun comun auncestre morust seisi et vous dioms qe cesti Robert de qi etc. fut seisi des tenemenz en autre ville qe ne soit nome en le bref saver in Middleton jugement du bref.

*HERUI.* si vous volez cesti bref abbatre il vous couient dire plus.

*Stonore.* donqe vous dioms nous qe cestui Robert auoit tenemenz en Middleton qe nest paas nommee en le bref ou Johan et Thomas vnt lour partie del heritage etc. et purpartie et cestui bref suppose qil ne vnt rien del heritage et demaundoms jugement du bref.

*Pass.* vous ne poez dire qe nous eioms partie del heritage en les viles nomez en le bref et demaundoms jugement.

*HERUI.* il vous dient qe vous estes seisi des tenemenz en Middleton et a partie de purpartie del heritage celui de qi vostre bref suppose qe vous nauez rien a quei il couient qe vous responez.

*Malm.* il ne vnt pas dit qe nous sumes seisi de partie en noun de

<sup>1</sup> Robert  $\eta$ . <sup>2-3</sup> seisine etc. aucune chose seroit de nous oster qe nous naveroms pas nostre age mes depus qe nous sumes entre apres la mort Esteuene nostre pere com fiz et heir jugement etc.  $\eta$ . <sup>3</sup> From this point to the end  $\eta$ , collated with  $\theta$ , reads:—

*SRIG.* cet un Nuper qe ne git forge entre priues<sup>a</sup> et parceners de une heritage en quel bref noun age de une part ne de altre ne targe point le plee pur quei dites outre.

*Fris.* Robert de qi seisine vous demandet auoit heritage en divers villes sauer en le villes nomes en le bref et en Nortone et vous memes estes seisi de partie de le heritage qe fut a meme celi Robert en Nortone et cet bref <sup>b</sup>est done<sup>c</sup> en cas ou les demandans ne ont rien jugement de cet bref.

*Malm.*<sup>d</sup> vous ne poet cet bref abatre saunz ceo qe vous ne puisset dire qe nous sumes seisi etc.<sup>e</sup> qe fut a Robert<sup>f</sup> en lez villes nomes en le<sup>g</sup> bref <sup>h</sup>et ceo ne dites vous pointz jugement etc.<sup>i</sup>

*Fris.* nous avoms dit qe vous estes seisi de partie de le heritage qi est un gros qe fut a meme ceti Robert de qi seisine etc.

*Pass.* donques dites vous qe nous sumes seisi en noun de pourpartie en alowance de terres qe vous tenet.

*Fris.* Ieo plede a vostre bref et noun pas a laccion.

*Pass.* put estre qe nous sumes enz com estranger et noun pas com parcener.

*SRIG.* si vous estes enz com estranger a vous est a pleder<sup>k</sup> a oster nous de nostre bref et si vous estes enz com priue tot seit ceo de vostre ocupacion demene et vous fussez enplede nepurqant<sup>l</sup> vous aueret eide de vos parceners et par tant ensut qe cet bref entre vous ne git pas.

*Pass.* autel avantage averoms nous en cet bref com nous averoms en bref de

<sup>a</sup> pier  $\theta$ . <sup>b-c</sup> gist  $\theta$ . <sup>d</sup> *Marlebr.* <sup>e</sup> *for* etc.  $\theta$  *has* de parte de heritage. <sup>f</sup>  $\theta$  *adds* de qi seisine etc. <sup>g</sup> nostre  $\theta$ . <sup>h-i</sup> *from*  $\theta$ .

<sup>k</sup>  $\theta$  *adds* le en meinteintenance de vostre bref. <sup>l</sup> *iadumans*  $\theta$ .

*Friskenev.* If we had entered upon the death of him from whom you take your title, then, perhaps, we might have to answer while under age; but here we entered after the death of Stephen. Consequently we submit that we ought to await our age.

SPIGURNEL J. The *nuper obiit* lies between parceners under age. The parties here are parceners, and therefore you must answer.

*Stonore.* This writ lies between parceners for demanding a just share of the whole heritage of which a common ancestor died seised. And we tell you that this Robert, from whom etc. was seised of tenements in another vill that is not named in the writ, to wit, in Middleton. Judgment of the writ.

STAUNTON J. If you want to abate this writ you must say something more.

*Stonore.* Then we tell you that this Robert had tenements in Middleton, not mentioned in this writ, out of which John and Thomas received their part and share of the heritage etc., while this writ supposes that they have had naught of the heritage; and we ask judgment of the writ.

*Passeley.* You cannot say that we had any part of the heritage lying in the vills named in the writ, and we ask judgment.

STAUNTON J. They tell you that you are seised of tenements in Middleton as a portion of your share of the heritage of which your writ says that you have naught; and you must answer what they say.

*Malmerthorpe.* They have not said that we are seised of aught in

purpartie com en allowance etc. en les viles nomez en le bref ne il ne dient mie qe nous sumes seisi des tenemenz en Middleton en allowance des tenemenz en les autres viles par quei il semble qe nous nauoms mester a ceo respoundre qil alleggent.

SPIGURNEL. serreit ceo un bon trauers en cesti bref qe vous nauez rien dil heritage Robert en tieles viles certes nay mes couendreit qe vous deissez qe vous nauerez rien dil heritage par quei si vous volez meintener vostre bref il couient qe vous diez si vous tenez tenemenz en Middleton en partie de la purpartie dil heritage ou noun.

*Pass.* il nous ne poount paas de cesti bref ouster sil ne dient qe nous eioms partie dil heritage en mesmes les viles auxicom femme ne serra pas de bref de dowere etc. dount ele rien nad tut eit ele dowere en autres viles qe neit nome en soun bref.

SPIGURNEL. le quel volez vous eider par comune lei ou par statut.

*Pass.* par comune lei et demaundoms jugement com auaunt.

HERUI. auaunt statut en bref de dowere dount dame rien nad eu en Nuper obiit les auerremenx soleiont estre resceus qe les demandantz en lun caas et en lautre auoient partie en quele vile qe ceo fut et par statut nest cest auerrement restreint forsqe en dowere et ceo en fauour de dowere par quei en cas qe nous sumes si est tut a la comune lei ou lauerrement soleit estre resceu par quei responez si vous feustes seisi en partie de purpartie dil heritage auxicom il vous vnt sourmys.

*Pass.* apres la mort Robert nostre ael etc. une Luce tint les tene-menx a terme de vie dount nous demaundoms ore purpartie et le remanaunt dount Robert morust seisi fut partie etc. Et apres le deces Luce si entra cestui Peres en lentier et demaundoms jugement si nous naueroms de ceo rescouerir par cestui bref.

SPIGURNEL. pur ceo qe vous ne poez dedire qe vous nestes seisi des tenemenz en Middleton en partie de purpartie si [sic] le heritage etc. si agarde cest court qe vous ne preignez rien par vostre bref etc.

Set habeat breue de recto de racionabili parte.

dower "unde nichil" ne abatereit pas si la feme en fut seisi<sup>c</sup> de partie de tenemenz qe furent a son baron en les villes nomes en son bref ausi en cet bref de nuper obiit etc.

SPIG. "bref unde nichil habet si est meintenu" par statut qe de comune lei soleit estre abatu et le nuper obiit demourt uncore a la comune ley et issi ensut qe le bref se abatera.

Et pur ceo qil ne point dedire qil ne furent seisi de partie etc. fut agarde qil ne prisent rien par lour bref etc.

<sup>a-b</sup> un nichil habet mais bref un nichil habet [sic] *θ*.

<sup>c</sup> *θ* omits.

<sup>d</sup> *θ* adds ceo qe.

<sup>e</sup> *θ* adds en cas si est done.



the vills named in the writ as in lieu of our share etc. ; neither do they say that we are seised of tenements in Middleton in lieu of tenements in the other vills ; and therefore it seems to us that we need not answer their allegations.

SPIGURNEL J. Would it be a good traverse under this writ to say that you have naught of Robert's heritage in such and such named vills ? No. You must say that you have naught of the heritage. Therefore, if you want to support your writ, you must say whether or not you hold tenements in Middleton as part of your share of the heritage.

*Passeley.* They cannot oust us from this writ, unless they say that we had part of the heritage in these same vills, any more than they could oust a wife from her writ of dower *unde nihil habet*, even though she has had dower in other vills that are not named in the writ.

SPIGURNEL J. Are you relying upon common law or upon statute ?

*Passeley.* Upon common law ; and we ask judgment as before.

STAUNTON J. Previous to the statute the averments that were customarily received under a writ of dower *unde nihil habet* [and] in *Nuper obiit* were that the demandants in both the one case and the other had received some part in some vill where the tenements lay. The statute has not affected this averment, except in case of dower, and it affects it favourably in respect of [the claimant of] dower. Consequently, in the circumstances in which we find ourselves, the common law alone applies, and at the common law the averment is receivable. Therefore you must answer whether you were seised of part of your share of the heritage as they allege that you were.

*Passeley.* At the death of Robert our ancestor etc. one Lucy held for the term of her life the tenements of which we are now demanding our share. The rest of the land of which Robert died seised was divided etc. Upon Lucy's death this Peter entered upon the whole of what was held by Lucy ; and we ask judgment whether by this writ we cannot have recovery.

SPIGURNEL J. Seeing that you cannot deny that you are seised of tenements in Middleton as of part of your share of the heritage etc., this Court gives judgment that you take naught by your writ etc.

But he may have a writ of right *de rationabili parte*.

GATEWYK v. GATEWYK.<sup>1</sup>

## Note from the Eyre Roll.

Richard the son of Richard of Gatwick and William of Gatwick claim from Katherine of Gatwick and her two sisters, Margaret and Elizabeth, two parts of certain lands and tenements and rents in Ash near Meopham, Kemsing, Seal, Otford, Sevenoaks and Dartford 'ut ius et racionabilem partem suam que eis contingit de hereditate que fuit Ricardi de Gatewayk patris predictorum Ricardi et Willelmi et au predictarum Katerine Margarete et Elizabethe cuius heredes ipsi sunt et qui nuper obiit.'

The count was:—quod predictus Ricardus antecessor etc. fuit seisitus de integro predictorum tenementorum in dominico suo ut de feodo et iure tempore pacis tempore domini Edwardi Regis patris domini Regis nunc capiendo inde expletias ad ualenciam etc. et nuper obiit inde seisitus etc. Et de ipso Roberto descendit ius etc. istis Ricardo filio Ricardi et Willelmo et cuidam Iohanni ut filiis et heredibus eo quo tenementa sunt partibilia et de tenura de Gaueikynde etc. Et de ipso Iohanne descendit ius propartis sue predictis Katerine Margarete et Elizabethe ut filiabus et heredibus etc. que totum tenent et racionabilem partem suam eis deforciunt. Et inde producant sectam etc.

Katherine, Margaret and Elizabeth appear by their guardian, whose plea was:—quod de tenementis unde predicti Ricardus et Willelmus clamant propartes etc. non tenent nisi unum messuagium duo molendina ducentas acras terre decem acras bosci octo acras prati viginti solidatas redditus et tres rodas marisci tantum scilicet [*setting out the situation of the parcels*]. Et quo ad propartem quam predictus Ricardus filius Ricardi inde clamat etc. Dicunt quod idem Ricardus nichil iuris clamare potest in eisdem tenementis etc. Quia dicunt quod idem Ricardus concessit remisit et omnino pro se et heredibus suis quietum clamavit predicto Iohanni de Gatewayk patri predictarum Katerine Margarete et Elizabethe cuius heredes ipse sunt et heredibus ipsius Iohannis totum ius clamandi quod habuit vel habere potuit in predictis tenementis imperpetuum etc. Et proferunt scriptum ipsius Ricardi filii Ricardi quod hoc testatur. Et petunt iudicium etc. Et quo ad propartem etc. quam predictus Willelmus clamat etc. Dicunt quo ad predicta tenementa in Esshe idem Willelmus nichil clamare potest in propartem etc. Dicunt enim quod quedam Mabilla de Torpel aliquo tempore fuit seisita de manerio de Esshe cuius manerii tenementa predicta in Esshe sunt parcella. que manerium illud tenuit de domino Henrico proauo domini Edwardi Regis patris domini Regis nunc in capite que quidem Mabilla de tenementis illis feoffauit quendam Willelmum de Faukeham tenendis sibi et heredibus suis per seruicium quarte partis unius feodi militis de predicta Mabilla et heredibus suis in perpetuum etc. Et dicunt quod predictus Henricus Rex de quo predicta Mabilla tenuit tenementa predicta in capite ut predictum est postea concessit et confirmauit concessionem et confirma-

<sup>1</sup> Reported by γ, δ, ε, and ζ.

## GATWICK v. GATWICK.

Note from the Eyre Roll—*continued*.

cionem predictas per predictam Mabillam factas predicto Willelmo de Faukham pro ipso Rege et heredibus suis etc. Et proferunt cartam predicti domini Henrici Regis que predictas concessiones et confirmaciones testatur etc. Et ex quo predictus Willelmus de Gatewyk non potest dedicere quin tenementa predicta tenentur per seruicium militare et sunt liberum feodum per feoffamentum predictae Mabilie et concessionem et confirmacionem predicti Henrici Regis etc. petunt iudicium si predictus Willelmus de Gatewyk clamare potest aliquam partem tanquam de tenementis partibilibus etc. Et quo ad predicta tenementa in Seuenok dicunt quod tenementa illa sunt parcella manerii de Denhelle et sunt liberum feodum et non de tenura de Gauelikynde etc. Et quo ad predicta tenementa in Otteford dicunt quod quinque acre prati de predictis octo acris etc. sunt liberum feodum et non de tenura de Gauelikynde predicta etc. Et quo ad duas acras de predicto prato etc. dicunt quod predictus Iohannes pater etc. et predictus Ricardus pater ipsius Iohannis dudum perquisiuerunt illas duas acras prati etc. tenendas eisdem et heredibus suis etc. quiquidem Iohannes superuixit ipsum Ricardum etc. Ita quod idem Ricardus antecessor etc. non obiit solus seisitus de tenementis illis etc. Et quod ad unam acram prati etc. dicunt quod predictus Iohannes de Gatewyk pater ipsarum Katherine Margarete et Elizabethae perquisiuit illam tenendam sibi et heredibus suis. Ita quod predictus Ricardus antecessor etc. nunquam fuit inde seisitus etc. Et quo ad predictam terram in Kemesing dicunt quod terra illa est liberum feodum et non de tenura de Gauelikynde predicta etc. Et quod ita parati [*sic*] sunt verificare per patriam etc. Et quo ad predictas tres rodas marisci etc. dicunt quod mariscum illud est de tenura de Gauelykynde et partibile etc. et inde parati [*sic*] sunt reddere prefato Willelmo propartem ipsum inde contingentem etc.

The replication was :—Et Ricardus filius Ricardi de Gatewyk bene cognoscit predictum scriptum esse scriptum suum set dicit quod scriptum illud ei preiudicare non debet etc. quia dicit quod tempore confeccionis eiusdem scripti fuit ipse infra etatem etc. Et hoc paratus est uerificare per patriam etc. Et petit iudicium etc. Et iidem Ricardus et Willelmus dicunt quod predicta tenementa unde ipsi clamant propartes etc. continent integre secundum quod superius petunt etc. et dicunt quod predicta Mabilla Torpel non tenuit predicta tenementa in Esshe de predicto Henrico Rege in capite sicut predictae Margareta Katerina et Elizabetha dicunt quia dicunt quod eadem Mabilla tenuit tenementa illa de quodam Rogero le Straunge et idem Rogerus de Rogero de Mounbray unde petunt iudicium si natura tenure de Gauelykynde per alienacionem ipsius Mabilie mutari potest seu debet in liberum feodum etc.

Dies datus est eis de audiendo iudicio suo coram Iusticiariis apud Westmonasterium a die Pasche in quinque septimanas saluis partibus rationabilibus hinc inde dicendis etc. Et sciendum quod recordum et processus simul cum breui mittentur coram Iusticiariis de Banco etc.<sup>1</sup>

<sup>1</sup> m. 81.



I.<sup>1</sup>

Nuper obiit.

Richard de Gatewyk et Thomas son frere portent le<sup>2</sup> nuper obiit vers Katerine Jone et Isabelle filles et heirs Jon de Gatewyk leur frere<sup>3</sup> et demandent leur resonables parties qe a eux afereit<sup>4</sup> del heritage qe fust a Richard de Gatewyk pier<sup>5</sup> les avantditz Richard et Thomas et ael les avantditz Katerine Jone et Isabelle qi heirs etc. et demandent les ij. parties de j. mies ij. molyns cc.<sup>6</sup> acres de terre xl.<sup>7</sup> acres de pree xl.<sup>8</sup> acres de boys xiiij. acres de mareys et xl. s. de rente <sup>9</sup>ove les apurtenances<sup>9</sup> en <sup>10</sup>Gatewyk B.<sup>10</sup> etc.

*Stonore* defend<sup>11</sup> et dit sire la ou <sup>12</sup>ils demandent<sup>12</sup> les ij. parties etc. <sup>13</sup>ut supra<sup>14</sup> vers les iij. enfauntz<sup>15</sup> la dioms nous qe Richard de Gatewyk leur ael fust seisi<sup>16</sup> de ceus tenementz et morust seisi apres qi mort Jon de Gatewyk leur <sup>17</sup>piere entra com fitz et heir entier et soul tynt et morust seisi apres qi mort eux entrerent com filles et heirs et sount denz age et prioms leur age.

*Malm.* cest un nuper obiit ou nous vous fesoms heir ove nous par qey vous ne devez vostre age aver.

Fust oste par meymes<sup>18</sup> les resouns qe sount ditez <sup>19</sup>en mesme tiel play en mesme cest eyre par quei etc.<sup>20</sup>

*Stonore* <sup>21</sup>respond outre par agard et dist sire<sup>22</sup> la ou ils demandent les ij. parties de xv. acres de boys il ni ad qe vj.<sup>23</sup> acres ne de mareys qe iij. acres<sup>24</sup> ne qe xx. s. de rente et de ceo <sup>25</sup>et del eel<sup>26</sup> nous <sup>27</sup>vous respondoms e<sup>28</sup> dioms qant a Richard qil ne peut rien demander qar en la seisine jon nostre pier<sup>e</sup> il releassa et quiteclama <sup>29</sup>tut le droit qe il avoit ou aver poeit<sup>30</sup> etc. par ceo fet etc. et mostra la quitecleime <sup>31</sup>en court qe ceo<sup>32</sup> etc.<sup>33</sup> et qant a Thomas <sup>34</sup>nous dioms qe<sup>35</sup> la ou il demande sa purpartie<sup>36</sup> des molyns<sup>37</sup> il ne peut rien demander qar il sount fraunk fee et tenuz de tiel manoir etc. et qant a iij. acres de pree Jon nostre pier<sup>e</sup> les purchacea par cestes chartres et qant a ij. acres de terre Jon nostre pier<sup>e</sup> et Richard nostre ael les purchacerent a eux et a leur heirs etc. et Jon survesqi et qant a tut le remennant vous dioms qe le manoir <sup>38</sup>de B.<sup>38</sup> fust en acun temps en la seisine Maud Torpel<sup>39</sup> qi cel manoir tint en chief du roi <sup>40</sup>de qi<sup>40</sup> ceus tenementz furent tenuz par service de la quarte

<sup>1</sup> Text of (I) from  $\gamma$  collated with  $\delta$  and  $\epsilon$ . <sup>2</sup> un  $\delta$ . <sup>3</sup> pere  $\delta$ .  
<sup>4</sup> afferunt  $\delta$ . <sup>5</sup> frere  $\delta$ . <sup>6</sup> ij.  $\delta$ . <sup>7</sup> x.  $\delta$ ,  $\epsilon$ . <sup>8</sup> xv.  $\delta$ ,  $\epsilon$ .  
<sup>9-9</sup> from  $\epsilon$ ;  $\gamma$  has etc. <sup>10-10</sup> A.  $\delta$ . <sup>11</sup> defendit  $\delta$ . <sup>12-12</sup> il demande  $\delta$ .  
<sup>13-14</sup>  $\delta$  omits. <sup>15</sup>  $\delta$  adds sire. <sup>16</sup>  $\delta$  adds soul. <sup>17-20</sup> ael fut seisi  
soul de ceus tenemenz entiers et tent et morust seisi apres qi mort eles sunt  
entre com filles et heirs et sunt deinz age et prient leur age et furent oustez  
eadem ratione quod in proximo placito supra  $\delta$ . <sup>18</sup> from  $\epsilon$ . <sup>19-20</sup> supra in  
proximo placito par quei etc.  $\epsilon$ . <sup>21-22</sup> from  $\epsilon$ . <sup>23</sup> v.  $\delta$ . <sup>24</sup> rodes  $\delta$ .  
<sup>25-26</sup>  $\delta$  omits. See Introduction, p. xlix. <sup>27-28</sup> from  $\epsilon$ . <sup>29-30</sup> from  $\epsilon$ . <sup>30-33</sup> et  
mist avant fait qe ceo tesmoigne  $\delta$ . <sup>31-32</sup> from  $\epsilon$ . <sup>34-35</sup> from  $\epsilon$ . <sup>36</sup> partie  $\delta$ .  
<sup>37</sup>  $\epsilon$  adds qe. <sup>38-38</sup>  $\epsilon$  omits. <sup>39</sup> de T.  $\delta$ . <sup>40-40</sup> et dount  $\delta$ .

## I.

Richard of Gatwick and Thomas his brother bring the *nuper obiit* Nuper obiit. against Katherine, Joan and Isabel, daughters and heiresses of John of Gatwick, brother of the said Richard and Thomas, and demand their proportionable portions accruing to them from the heritage of Richard of Gatwick who was the father of the aforementioned Richard and Thomas, and grandfather of the aforementioned Katherine, Joan and Isabel, whose heirs etc., and they demand the two parts of one messuage, two mills, two hundred acres of land, forty acres of meadow, forty acres of wood, fourteen acres of marsh, and forty shillings of rent, together with the appurtenances in Gatwick, B. etc.

*Stonore* denies and says:—Sir, whereas they are demanding the two parts etc. *as above*, from the three infants, we tell you that Richard of Gatwick their ancestor was seised of those tenements and died seised of them; and that upon his death John of Gatwick, their father, entered as son and entire heir and held solely and died seised, and that upon his death they entered as his daughters and heiresses; and they are under age and we pray their age.

*Malmerthorpe*. This is a *nuper obiit* where we make you heir together with ourselves. Consequently you ought not to have your age.

He was ousted for just the same reasons as those set out in a similar action in this same Eyre.<sup>1</sup> Wherefore etc.

*Stonore* answers over by ruling of the court and says:—Sir, whereas they are demanding two parts of fifteen acres of wood, there are but six acres in all, and there are but three acres of marsh and but twenty shillings of rent and as to the one and the other we make answer and say, as to Richard, that he cannot demand aught; for, in the seisin of John, our father, he released and quitclaimed all the right which he had or might have etc. by this deed—and he tendered in court the quitclaim which testified that etc.—and, as to Thomas, we say in regard to his claim to a share in the mills that he can claim naught in them, for they are frank fee and are holden of such a manor etc.; and in respect of the three acres of meadow [we say that] John, our father, purchased them by these charters; and, as to the two acres of land, John, our father, and Richard, our grandfather, purchased them to themselves and their heirs etc., and John was the survivor; and, as to all the rest, we tell you that the manor of B. was at one time in the seisin of Maud Torpel who held this manor in chief from the King; and she held those tene-

<sup>1</sup> Sc. *Croft v. Croft*, pp. 147–51 above.



partie dun fee de chivaler et vous dioms qe un W. de B.<sup>1</sup> nostre auncestre tint ceus tenementz et morust son heir denz age e en la garde la dame peus apres touz jours leyne fitz ad entre et tenu soul apres la mort son auncestre saunz ceo qe les tenementz furent unges partyz<sup>2</sup> et issint sount ceus tenementz fraunk fee. Jugement sil peut rien demander.

SPIGURNEL. vous navez mie provee uncore qe les tenementz sount fraunk fee qar tut tenist<sup>3</sup> Maud le manoir en fee en chief de roi par service de chivaler uncore purra<sup>4</sup> les tenantz del manoir tenir en Gavelkynd etc. com en autre cas si un seignur tiene<sup>5</sup> un manoir daunciene demene de roi par chivaler uncore tienent les tenants en sokemanre.<sup>6</sup>

*Malm.* la ou ils dient qe il ni ad mie taunt com nous demandoms<sup>7</sup> prest quod sic et qant as molyns <sup>8</sup>la ou il dient franc fe<sup>9</sup> Gavelkind prest etc.<sup>10</sup> quant ala terre e pre ou il allegent purchaz ut supra Richard nostre piere morust seisi prest<sup>11</sup> etc. et qaunt al remennant qil dit estre fraunk fee Gavelkind prest etc.<sup>12</sup>

*Pas.* a cest averrement ne poez avenir qar <sup>13</sup>nous vous dioms qe<sup>14</sup> Maud Torpel qi fust seignur<sup>15</sup> del manoir de B. de qi ceus tenementz furent tenuz etc. releassa certaines services qe furent dewes des tenementz viz arures siers et tiel services en la seisine Willem nostre auncestre tenant adonques des tenementz et graunta et conferma a <sup>16</sup>Willem a<sup>17</sup> tenir les tenementz de lui et de ses heirs par service de la quarte partie dun fee de chivaler par ceo fet <sup>18</sup>qe cyest<sup>19</sup> et mist avant la chartre Maud <sup>20</sup>qe ceo temoigne et vous<sup>21</sup> dioms qe peus le roi H. <sup>22</sup>ael etc.<sup>23</sup> recita mesme ceste chartre et graunta et conferma mesme les tenementz a Willem a tenir de Maud etc. par les services de la quarte partie dun fee de chivaler et mist avant la chartre le roi <sup>24</sup>qe ceo tesmoina et<sup>25</sup> issint sount <sup>26</sup>les tenementz<sup>27</sup> fraunk fee primes par le fet le seignur del manoir et peus par la chartre <sup>28</sup>le roi<sup>29</sup> Jugement si <sup>30</sup>il pusse ou deyeve<sup>31</sup> a nul averrement avenir<sup>32</sup> countre<sup>33</sup> le fet le roi qe est de record <sup>34</sup>a dire qe les tenementz sunt Gavelkynde.<sup>35</sup>

HERVI. il vous plede fort et pur ceo nous agardoms primes qe vous respondez si les tenementz qe vous<sup>36</sup> demandez sount contenuz<sup>37</sup> en <sup>38</sup>celes chartres<sup>39</sup> ou noun.

*Malm.* donques demorroms<sup>40</sup> en vos agardz del houre <sup>41</sup>qe vous veiez bien<sup>41</sup> qe le fet qils mettent avant de Maud etc. ne veut qe soule-

<sup>1</sup> G. €.      <sup>2</sup> departiz δ.      <sup>3</sup> tient δ.      <sup>4</sup> purrunt δ.      <sup>5</sup> tient δ.  
<sup>6</sup> sokemannere etc. €.      <sup>7</sup> dioms δ.      <sup>8-9</sup> from €; etc. γ.      <sup>10-11</sup> from €.      <sup>12-13</sup> δ omits.  
<sup>14-15</sup> from €.      <sup>16</sup> dame €.      <sup>17-18</sup> from €.      <sup>19-20</sup> from δ; etc. γ.  
<sup>21-22</sup> from €; etc. γ.      <sup>23-24</sup> from δ; etc. et γ.      <sup>25-26</sup> δ omits.      <sup>27-28</sup> from €; etc. γ.  
<sup>29-30</sup> from €; etc. γ.      <sup>31-32</sup> from €.      <sup>33-34</sup> from €; etc. γ.      <sup>35-36</sup> sunt δ.      <sup>37-38</sup> from €.      <sup>39-40</sup> ceste chartre δ.  
<sup>41-42</sup> demouroms δ.



ments by the service of a fourth part of a knight's fee, and we tell you that one W. of B., our ancestor, held those tenements and died seised ; and his heir was under age and in the wardship of the lady [of the manor] ; and ever since then the eldest son has entered and held solely upon the death of his ancestor, without the tenements ever having been divided, and so these tenements are frank fee. Judgment if he can demand aught.

SPIGURNEL J. You have not yet proved that the tenements are frank fee, for though Maud held the manor in fee in chief from the King by knight-service yet the tenants of the manor might possibly hold in Gavelkind etc., as, in other cases, though the lord hold a manor of ancient demesne of the King by knight-service, yet the tenants hold in socage.

*Malmerthorpe.* As to their allegation that there is not as much as we are demanding, ready [to aver] that there is ; and as to their allegation that the mills are frank fee, ready to aver that they are Gavelkind ; and as to the land and meadow which they allege were purchased *as above*, ready to aver that Richard, our father, died seised of them ; and, as to all the rest that they say is frank fee, ready to aver that it is Gavelkind.

*Passeley.* To that averment you cannot get, for we tell you that Maud Torpel, who was lady of the manor of B. and of whom these tenements were held etc., released certain services which were due from the tenements, that is to say ploughings and sowings and similar services, during the seisin of William our ancestor, who was then tenant of the tenements, and granted and confirmed the tenements to William to hold of her and her heirs by the service of a fourth part of a knight's fee by this deed which I have here—and he made *profert* of Maud's charter in evidence of this—and we tell you that afterwards King Henry, the grandfather etc., recited this same charter and granted and confirmed the same tenements to William to hold of Maud etc., by the services of a fourth part of a knight's fee—and he made *profert* of the King's charter in proof of this—and so the tenements are frank fee, in the first place by the deed of the lord of the manor, and in the second by the King's charter. Judgment whether he can or ought to get to any averment in contradiction of the King's charter, which is of record, by saying that the tenements are Gavelkind.

STAUNTON J. His arguments against you are strong ones, and so we rule first that you must answer whether the tenements which you are demanding are included in this charter or not.

*Malmerthorpe.* Then we abide your judgment, for you see clearly that Maud's deed which they tender shows that Maud only released

ment <sup>1</sup>qe Maud releassa etc. les services etc. ut supra<sup>1</sup> et par tiel fet ne peut la nature del soyl en nule manere estre chaunge saunz ceo <sup>2</sup>qe le nust<sup>2</sup> este seisie del soil et hors <sup>3</sup>de sa seisine ust feffe Willem<sup>3</sup> et le fet le roi <sup>4</sup>qe il mettont avant<sup>4</sup> ne veut qe graunt et confermement de mesme cele chartre<sup>5</sup> dount sire vous veez qe lune chartre<sup>6</sup> ne lautre ne tesmoigne la nature de soil estre chaunge. Jugement sil peuse par tiels fetz oster nous dun<sup>7</sup> averrement qe se estent a la nature del soil soulement.

SPIGURNEL il lui<sup>8</sup> semble qe la nature <sup>9</sup>de soil<sup>9</sup> est chaunge qar il veut dire qe tut usent les tenementz este gavelkind avant les chartres fetes ore sount il fraunkfee etc. tut ne voilent les chartres doun etc. qar jeo poos qe homme graunte et confirme a seon vileyn les tenementz qil tient de lui en villenage a tenir de lui par service de chivaler jeo enteng<sup>10</sup> qe tut ne donne le seigneur les tenementz asez est la nature del soil chaunge.

HERVI <sup>11</sup>non est simile<sup>11</sup> qar avant <sup>12</sup>le graunt<sup>12</sup> le vileyn navoit nul estat en les tenementz <sup>13</sup>et ideo est<sup>13</sup> la nature <sup>14</sup>du soil<sup>14</sup> chaunge qant a lui non sic hic.<sup>15</sup>

SPIGURNEL. Jeo poos qe un seigneur daunciene demene relese les services dewes del sokeman et graunte et confirme a tenir de lui les tenementz par service de chivaler la nature <sup>16</sup>du soil<sup>17</sup> est chaunge qar donques est ceo fraunkfee.

*Fris.* uncore nient<sup>18</sup> semblable qar<sup>19</sup> sokemans ne sount mie si pres la comun ley com Gavelindeys qar gavelindeys poent porter la novel disseisine et touz autres brefs a la comune ley etc. par qey il est plus fort de chaunger la nature de soil de <sup>20</sup>Gaveletenants qe des sokemans.<sup>20</sup>

*Malm.* la chartre qil mettent avant <sup>21</sup>del seigneur<sup>21</sup> barre le seigneur a demander les services dewes de les tenementz avant la chartre fete et ne chaunge mye lestat del soil <sup>22</sup>ne le fet le roi ne veut qe graunt et confermement<sup>22</sup> mesme cele chartre <sup>23</sup>par quei nous demorrons en vos<sup>23</sup> Jugement si nous <sup>24</sup>ne serroms<sup>24</sup> receus daverrer qe les tenementz sount Gavelkind etc.

*Pass.* et nous etc. ut supra.

SPIGURNEL. ore respondez a la quitecleime qest mys en barre encountre Richard.

<sup>1-1</sup> relese et quiteclame pur services et sic δ. <sup>2-2</sup> qil avoit δ. <sup>3-3</sup> du seisine done δ. <sup>4-4</sup> from ε; γ has etc. <sup>5</sup> relese δ. <sup>6</sup> fet δ. <sup>7</sup> de nostre δ. <sup>8</sup> δ omits. <sup>9-9</sup> des tenementz δ. <sup>10</sup> entenke δ. <sup>11-11</sup> nient semblable δ. <sup>12-12</sup> δ omits. <sup>13-13</sup> par quei assez est δ, ε. <sup>14-14</sup> from ε; γ has etc. <sup>15</sup> huiusmodi δ. <sup>16-17</sup> from ε; γ has etc. <sup>18</sup> ne sunt il my δ. <sup>19</sup> δ adds les. <sup>20-20</sup> Gauilkind qe de sokage etc. δ. <sup>21-21</sup> δ omits. <sup>22-22</sup> mes le fet le roi ne se estent a plus mes il grante et confirme δ, ε. <sup>23-23</sup> from ε. <sup>24-24</sup> devoms estre δ.

etc. the services etc. *as above* ; and that the nature of the soil could in no way be changed by such a deed unless she had been seised of the soil and out of her seisin had enfeoffed William ; and the King's charter of which they have made *profert* purports only to grant and confirm what is granted by the other charter. So then, Sir, you see that neither the one charter nor the other proves that the nature of the soil has been changed. Judgment whether by such deeds he can oust us from an averment which is concerned only with the nature of the soil.

SPIGURNEL J. It appears to him that the nature of the soil is changed, for he argues that though the tenements had been Gavelkind before the making of the charters they are now frank fee etc. though the charters do not purport to make a grant etc. For put the case that a man grants and confirms to his villein the tenements which he holds of him in villeinage to hold of him by knight-service, then I am of opinion that though the lord does not give the tenements yet what he does is sufficient to change the nature of the soil.

STAUNTON J. It is not a parallel case, for the villein, previously to the grant, had no estate in the tenements, and therefore [in that case] the nature of the soil is changed in regard to him. But not so here.

SPIGURNEL J. I put the case that a lord of ancient demesne releases the services due from the socman and grants and confirms the tenements to him to hold of him, the lord, by knight-service. The nature of the soil is changed, for then it is frank fee.

*Friskenev.* Again the case is not a parallel one, for socmen are not so near the common law as those who hold by Gavelkind tenure ; for these latter can bring writs of novel disseisin and all other writs under the common law etc. ; and so it takes more to change the nature of soil held in gavelkind than of soil held in socage.

*Malmerthorpe.* The lord's charter which they tender bars the lord from demanding the services that were due from the tenements before the execution of the charter and does not change the nature of the soil. Neither does the King's charter do anything more than grant and confirm this same charter. Therefore we abide your judgment whether we shall not be received to aver that the tenements are gavelkind.

*Passeley.* And we etc. *as above*.

SPIGURNEL J. Now answer to the quitclaim that is tendered in bar against Richard.



*Cant.* <sup>1</sup>Syre il grante bien qe ceo son fet mes il ne ly deyt nure qar il fust dedeynz age quant il le fist.<sup>1</sup>

*Westcote.* ore demandoms jugement si nous peusoms estre partie a tiel averrement denz age qest a voider le fet a touz jours.

*Fris.* il nest pas si fort com sil fust dedit.

*Westcote.* ci<sup>2</sup> est qar cest averrement est danentir le fet a touz jours et pur ceo demorroms en vos agardz si nous peusoms estre partie a tiel averrement <sup>3</sup>dedeynz age<sup>3</sup>

<sup>4</sup>Adiornati fuerunt ad alium diem ad quem—<sup>4</sup>

*Malm.* uncore demanda<sup>5</sup> jugement si la nature de soil soit chaunge par le fet del seignur <sup>6</sup>ut supra<sup>6</sup> qe nest qe graunt et confermement et le fet le roi ne oevere plus largement qe ne fet la chartre le seignur la qele il graunte et conferme et demorroms en voz jugements <sup>7</sup>etc. ut supra.<sup>7</sup>

*HERVI.* la ou vous ditez qe le graunt<sup>8</sup> le roi ne se estent nient plus largement qe ne fet la chartre sur quele le graunt et le confermement le roy est fait vous ditez mal qar <sup>9</sup>tut est acountee<sup>9</sup> le fet le roi en jugement par qey vous ne poez nient dire qe la nature de soil nest chaunge.

*Malm.* Sire nous sumes iij. freres leyne de nous <sup>10</sup>est entre<sup>10</sup> en nostre commun heritage qe est Gavelkind et prist fet de seignur a tenir fraunchement etc. peut cel fet qant nous portoms nostre bref <sup>11</sup>vers vous<sup>11</sup> la nature de soil chaunge jeo <sup>12</sup>enteng qe noun.<sup>12</sup>

*Inge.*<sup>13</sup> Justice vous ditez verite qar apres le deces vostre auncestre le droit qe vous demandez vous decendy en commun quel droit vous ne peut estre tollet par autre fet mes en ceo cas ils ount alegge qe le seignur <sup>14</sup>du manoir<sup>14</sup> enfraunchi les tenementz en la seisine un W. vostre auncestre qi fust soul tenant le droit des queux tenementz vous est decendu par mi luy et qant les tenementz furent enfraunchi nul tort ne vous pout estre fet qar rien ne vous feust decendu <sup>15</sup>etc. ne ne poeit<sup>15</sup> qar vous fustes donques a nestre a lung temps apres par qey etc.

<sup>1-1</sup> from  $\epsilon$ ; sire il fust denz age qant il fist le fet par qey etc.  $\gamma$ . <sup>2</sup> si  $\delta$ .  
<sup>3-3</sup> from  $\epsilon$ . <sup>4-4</sup> from  $\epsilon$ ; ad alium diem  $\gamma$ . <sup>5</sup> demandoms  $\delta$ . <sup>6-6</sup>  $\delta$  omits.  
<sup>7-7</sup>  $\delta$  omits. <sup>8</sup> fait  $\delta$ . <sup>9-9</sup> tort est al counte  $\delta$ . <sup>10-10</sup> entra  $\delta$ . <sup>11-11</sup> vers  
 leyne  $\delta$ ; envers nostre frere  $\epsilon$ . <sup>12-12</sup> entente qe nanyl. Jugement  $\delta$ . <sup>13</sup>  $\delta$  omits.  
<sup>14-14</sup> dust aver  $\delta$ . <sup>15-15</sup>  $\delta$  omits.

*Cambridge.* Sir, he fully admits that it is his deed, but it ought not to be to his prejudice for he made it while he was under age.

*Westcote.* We now ask judgment whether, while we are under age, we can be party to such an averment, for it will annul the deed for ever.

*Friskeney.* It is not of such importance as it would be if the deed were denied.

*Westcote.* Yes, it is ; for this averment goes to cancel the deed for ever ; and therefore we abide your judgment whether, while we are under age, we can be party to such an averment.

Upon another day to which the parties were adjourned :

*Malmerthorpe* again asked judgment whether the nature of the soil was changed by the lord's deed *as above* ; for, [he said,] this is only a grant and confirmation, and the King's deed has no wider operation than the lord's charter, which it grants and confirms ; and we abide your judgments etc. *as above*.

STAUNTON J. You are wrong when you say that the King's grant does not operate more widely than the charter upon which the King's grant and confirmation are based ; for, in giving our judgment, it is the King's deed alone of which we shall take cognisance. Consequently you cannot say that the nature of the soil has not been changed.

*Malmerthorpe.* Sir, we are three brothers.<sup>1</sup> The eldest of us entered upon our common heritage, which is Gavelkind land, and he received a charter from the lord granting to him to hold free etc. Could that deed have changed the nature of the soil at the time we purchased our writ against you ? I trow not.

*Ingham.*<sup>2</sup> Justice, what you say is sound law ; for [your<sup>3</sup> case is that] upon the death of your ancestor the right which you are now demanding descended to you in common [with your elder brother] and that that right cannot be taken from you by the deed of any other party. But in the present circumstances the tenants are alleging that the lord of the manor enfranchised the tenements while they were still in the seisin of one W., your ancestor, who was sole tenant. Any right you can have in these tenements must descend to you from him ; and when the tenements were enfranchised no injury could be done to you, for nothing had descended to you, nor could have descended to you, for you were not born till long afterwards. Wherefore etc.

<sup>1</sup> *i.e.* the two demandants and their deceased elder brother, father of the three tenants.

<sup>2</sup> *Ingham* is apparently speaking as *amicus curiæ*.

<sup>3</sup> *Ingham* is now addressing the demandants or their counsel. It seems necessary to sense to supply the words within brackets.

*Malm.* sire ils enforcent<sup>1</sup> mout lour reson de ceo qil dyent qe Maud Torpel<sup>2</sup> tynt en chief del Roi Sire la dioms nous qe ele tynt de Jon Mounbray et Jon dun autre etc. <sup>3</sup>issi qe il yount meens entre Maud et le roi par qey nentomdoms mie qe par son fet ne par confermement de roi en prejudice dautres seignurs peusent les tenementz estre enfraunchiz.<sup>3</sup>

*Pas.* tut fust il com vous ditez il ne serreit mie countre<sup>4</sup> le seignurs par amount qar ore averent ils garde etc. <sup>5</sup>et avant nient.<sup>5</sup>

*Ing.*<sup>6</sup> Justice<sup>7</sup> mes il perdroit lavantage <sup>8</sup>de Gavelade qe lour est done de terre Gavelcund<sup>8</sup> qant tenauntz cessent par ij. aunz etc. la qele il ne poent perdre par autre fet a ceo qil semble.

<sup>9</sup>Sur ceo furent adjornez etc.<sup>10</sup>

## II.<sup>11</sup>

Richard de Gatewikes et William son per [*sic*] portent lor nuper obyt vers Katherine la file Johan de Gatewikes Elizabeth et Alice soers mesme les [*sic*] Katherine et demanderent lur resonable partie qe a eux afferroit del heritage qe fut a Richard de Gatewikes per les auantditz Richard et William et Ael auantditz Katherine Elizabeth et Alice et demanderent les ij. parties de iiij. acres de terre en Ashe et en Kennsings.

*Pas.* quant a Richard il ne put riens demander qar il relessa et quiteclama a Johan nostre pere etc. jugement etc. et mist auant le fet qe ceo testmoigna et quant a William en dreit de xx. acres de terre en Kennsingham qar ceo est fake [*sic*] fee et tennis de Sir William de Granson par service de Chivaler et prist etc. et quant a <sup>iiij</sup>xx. acres de terre en Ashe vous dioms qe William ne pust rien demander qar le Manere de Ashe dont les <sup>iiij</sup>xx. acres de terre sont parcele fuerunt ascun temps en la seisine Mabile de Therpe qe tient mesme le Manere de nostre Seigneur le Roie en cheefe per les Services de ij. fees de Chivaler le quel Mabile granta [a] un William qil tendroit mesme les tenemenz de lui par service de Chivaler et nostre Seigneur le Roie granta par son Chartre

<sup>1</sup> afforcent δ, ε.      <sup>2</sup> de T. δ.      <sup>3-5</sup> issint qe Johan entra enfranchi en mesme les tenemenz δ.      <sup>4</sup> encontre δ.      <sup>5-5</sup> ou autre ne auoient δ.  
<sup>6</sup> δ omits.      <sup>7</sup> ε omits.      <sup>8-8</sup> δ omits.      <sup>9</sup> δ adds et.      <sup>9-10</sup> Adiornabatur apud Westmonasterium etc. ε.      <sup>10</sup> adds JUSTICE non capiunt fines pro tenemento alieno in manum mortuam et sine domino Rege aut eius consensu.  
<sup>11</sup> Text of (II) from θ.



*Malmerthorpe.* Sir, they attach great importance to their allegation that Maud Torpel held of the King in chief. Sir, we tell you that she held of John Mowbray and of another John etc., and consequently there were mesnes between the King and Maud. Therefore we do not understand how either by Maud's deed or the King's confirmation of it the tenements could be enfranchised to the prejudice of the other [mesne] lords.

*Passeley.* Even though it be as you say it would not be to the prejudice of the lords, for now they get the wardship where before they had naught.

*Ingham.*<sup>1</sup> Justice, but they would lose their right to Gavelat,<sup>2</sup> which accrues to them from Gavelkind land, the right that when tenants have omitted for two years etc., a right which it would seem cannot be taken from them by another's deed.

Thereupon they were adjourned etc.

## II.

Richard of Gatwick and William his brother<sup>3</sup> bring their *nuper obiit* against Katherine the daughter of John of Gatwick, and Elizabeth and Alice, the sisters of the same Katherine, and demand their proportionable share of the heritage of Richard of Gatwick, that was father of the aforementioned Richard and William, and grandfather of the aforementioned Katherine, Elizabeth and Alice; and they demand the two parts of four acres<sup>4</sup> of land in Ash and Kemsing.

*Passeley.* As to Richard, he can claim nothing, for he released and quitclaimed to John our father etc. Judgment etc.—and he made *profert* of a deed testifying this—and as to William's demand in respect of the twenty acres of land in Kemsing, that is frank fee and holden of Sir William Grandison by knight-service. Ready etc. And as to the four score acres in Ash we tell you that William can demand naught therein, for the manor of Ash, of which the four score acres of land are parcel, was formerly in the seisin of Mabel of Thorp, who held the same manor in chief of our lord the King by the service of two knights' fees; the which Mabel granted the same tenements to one William to hold them of her by knight-service, and our lord the King granted and

<sup>1</sup> *Ingham* now seems to be arguing on the other side.

<sup>2</sup> '*Gavelat* is a speciall and antient kind of *cessavit* used in Kent where the custom of Gavelkind continueth, whereby the tenant shal forfeit his Lands or Tenements to the Lord of whom they are holden if hee withdraw from his lord his due rents and services.' This and much more touching Gavelat may

be found in *Termes de la Ley*, s.v. See also Robinson's *Common Law of Kent*, Bk. ii. ch. 6.

<sup>3</sup> In translating I have corrected an obvious mistake in the text.

<sup>4</sup> This is obviously incorrect. From what follows there appear to have been twenty acres of land in Kemsing and eighty in Ash.

et confirma mesme les tenemenz a dit William a tener en le forme avant-dit et demandoms jugement del heure qe le Chartre de Roie que est de record tesmoigne qe les tenemenz sont tenuz par service de Chivaler et issi franc fee si per cesti bref ne puiszes demander.

Et mist auant la Chartre Mabilie fait a Willem qe tesmoigne qe Mabilie auoit relessa [*sic*] les Services qe Willem voleit faire auant et gelins kokes et owes etc. a tenir de les services de Chivaler et la Chartre le Roie de confirmement etc.

*Malb.* ceo qe vous dites nest fors qe evidence qe le demandes sont franc fee Gavelkinde prist etc.

*SPrg.* il vous plement qe tut fut issi qe les tenemenz ussent estre avant gavelkinde qil sont ore trouez [*sic*] en francfee par le fait Mabilie qe fust dame du Manere per le Chartre qe est record come peirt qe seigneur du Manere de awncien demesne purra faire francfee par son fait ceo qe avant fut tenus de luy de awncien demesne.

*Friske.* le fait Mabilie qil mettent avant ne prove pas qe les tenemenz passerent hors de la seisin Mabilie a Willem forsque tantsoulement alegance des Services qe avant furent dues des Tenemenz par un autre service dont del heure qe Willem ne changa pas sa tenance nentendoms mie qe par nul fet fait en sa seisin puisse ceo qe avant fut Gavelkinde en franc fee torner.

*Malb.* nest pas semblable de awncien demesne de Gavelkinde qar Gavelkinde est plus pris [*sic*] a la Comune Ley qe awncien demesne pur ceo qe est pleadable par bref a la Comunes Assises de Novel disseisin etc. awncien demesne est tut pleadable par usage par qi la nature del un ne pust desilegerment<sup>1</sup> estre chaunge come lautre.

*West.* si Willem ust deuie et son fuiz deins age et le [*sic*] Mere ust happe lenfant a la garde de la tere et Mabilie ust port son bref de garde pur ceo qe Willem tient de luy par service de Chivaler e ele ust derene le garde pur reson des Services de Chivaler et per concessionem fraunc fee et sic ad iudicium.

*Frisk.* et quant a le quiteil Richard vous respond et dit qil fust denz age al temps de confection prist etc.

*West.* nous avons mis avant release et quitefet a nostre pere qi heir etc. et sumus et deins age [*sic*] a ceo qe vous tendez daurer si est en vedance [*sic*] du fait a touz iors a qi nous ne poemz estre partie denz age et prioms nostre age.

*Frisk.* y nest plus ore en ceo cas come si le fet ust este dedit etc.

<sup>1</sup> The reading of this word is very uncertain.

confirmed by his charter the same tenements to the said William to hold them in the manner aforesaid ; and we ask judgment whether, since the charter of the King, which is of record, proves that the tenements are holden by knight-service and so are frank fee, you can demand them by this writ.

And he made *profert* of Mabel's charter granted to William which testifies that she had released the services which William had previously rendered and the hens, cocks and ducks etc. [and that he was] to hold by knight-service ; and also of the King's charter of confirmation.

*Malmerthorpe*. What you say is only [presumptive] evidence that the lands in demand are frank fee. That they are gavelkind ready etc.

SPIGURNEL J. Their point against you is that though the tenements were formerly gavelkind they are now converted into frank fee by the deed of Mabel who was lady of the Manor [and] by the [King's] charter, which is of record ; for it seems clear that the lord of a manor of ancient demesne can, by his deed, convert what was previously held of him as of ancient demesne into frank fee.

*Friskenev*. The deed of Mabel which they tender merely proves that the tenements passed from the seisin of Mabel into that of William, and that another service was substituted for those previously due from the tenements. Since, then, William did not change his tenancy, we do not understand how any deed made during his seisin could turn into frank fee what had previously been gavelkind.

*Malmerthorpe*. There is no similitude between ancient demesne and gavelkind ; for gavelkind is nearer to the common law than is ancient demesne, seeing that it is pleadable by writ at the common assises of novel disseisin etc., while ancient demesne is only pleadable by custom, and consequently the nature of the one cannot be so easily changed as that of the other.

*Westcote*. If William had died leaving his son under age and the mother had seized the infant to obtain the wardship of the land, Mabel could have brought her writ of wardship on the ground that William held of her by knight-service, and she would have proved her right to wardship by reason of the knight-service and by the grant of frank fee, and on these would have gone to judgment.

*Friskenev*. And, as to the quitclaim, Richard answers you and says that he was under age at the time of its execution. Ready etc.

*Westcote*. We have tendered release and quitclaim made to our father, whose heir etc., and we are under age. That which you offer to aver would cancel this deed for ever ; and [to that averment] we cannot be party under age, and we pray our age.

*Friskenev*. It is not the same here as if the deed had been denied etc.



SPRG. nest pas un ou fet damene est mis pur barr encountre demandantz qi sont dedeinz age et la ou tenantz qi sont dedeinz age mettent avant fait fait a lor awncestor qar la ou il sont demandantz il sont eide per statute saver a bref de Aael besael et cosinage et la ou il sont tenantz<sup>1</sup> il sont a la comune Ley.

Et sic ad iudicium.

CAUVILLE v. DRAX.<sup>2</sup>I.<sup>3</sup>

Nuper obiit.

Un Thomas de Cauville<sup>4</sup> porta un nuper obiit vers Thomas de Drax<sup>5</sup> et counta de la seisine son uncle descendi a Thomas<sup>6</sup> vers qi cesti bref est ore porte<sup>7</sup> et a un Johan com a frers de J. descendi<sup>8</sup> la dreit de<sup>9</sup> sa pourpartie a<sup>10</sup> mesme cesti qore porte cesti bref<sup>11</sup> com a fitz.

Stonore. <sup>12</sup>Thomas de Drax vous<sup>13</sup> dit qe Johan pere de Thomas qore demande<sup>14</sup> relessa et quiteclama etc. a mesme cesti Thomas<sup>15</sup> vers qi cesti bref etc.<sup>16</sup> iugement<sup>17</sup> sil puisse rien demander.<sup>18</sup>

Cant. dedit<sup>19</sup> la quiteclame.<sup>20</sup>

Stonore. vous estes deinz age pur quei vous dioms qe vous ne poez estre partie a trier cesti fait auant vostre age.

Cant. estatut<sup>21</sup> voet qe si enfant deinz age port bref de possession de la seisine son auncestre et le tenant allegge feffement ou autre chos die purquei Justices agardent enquest la ou lenqueste soleit estre delaie tange al age lenfant qe lenqueste seit ore pris meyntenant auxi com il fut dage pur quei<sup>22</sup> etc.

Thod. lenfant est dedeynz age par quei<sup>23</sup> tut voleit il conustre tieu fait vous ne recouerez my par sa conisance<sup>24</sup> mes nient plus pout il dedire qe<sup>25</sup> il nel poet<sup>26</sup> conustre.

SPIGURNEL et HERUY nous entendoms lestatut en cas ou homme plede a<sup>27</sup> les poinz<sup>28</sup> de soun bref pur quei Justices agardent enqueste mes vous pledez ore tut en le droit pur quei attendez<sup>29</sup> vos iugements.

II.<sup>30</sup>

Thomas filius Ricardi de Caumele<sup>31</sup> porta son Nuper obiit vers Thomas de Caumele et demanda la meite de C. acres de terre et dit

<sup>1</sup> This word is conjectured rather than read. <sup>2</sup> Reported by δ, ε, η, θ and λ.  
<sup>3</sup> Text of (I) from δ collated with ε and λ. <sup>4</sup> from ε; C. δ. <sup>5</sup> from ε;  
 E. δ. <sup>6-7</sup> de Cauville ε. <sup>8-9</sup> from λ; δ omits. <sup>10-11</sup> Thomas qi  
 ore demande ε. <sup>12-13</sup> pur le tenant λ. <sup>12-14</sup> pur le tenant dist qe Johan  
 piere Thomas le demandant ε. <sup>15-16</sup> et demanda ε. <sup>17-18</sup> λ omits. <sup>19-20</sup> le  
 fet ε. <sup>21</sup> sire le statut de Gloucestre ε. <sup>22-23</sup> from ε. <sup>24</sup> from ε;  
 δ has recouerir. <sup>25-26</sup> from ε. <sup>27-28</sup> aucun point ε. <sup>29</sup> from ε; δ has  
 agardez. <sup>30</sup> Text of (II) from η collated with θ. <sup>31</sup> Camule θ.

SPIGURNEL J. There is a difference between a man tendering a deed in bar of infant demandants and infant tenants tendering a deed made to their ancestor; for where the infants are demandants they are aided by statute,<sup>1</sup> that is to say by the writs of ael, bisael and cosinage, while where they are [tenants] they are at the common law.

And so to judgment.<sup>2</sup>

## CAUVILLE v. DRAX.

### I.

One Thomas of Cauville brought a *nuper obiit* against Thomas of Drax and counted of the seisin of his uncle which descended to the Thomas against whom this writ is now brought and to a certain John as brothers. The right to John's share descended to this same [Thomas] who now bring this writ as John's son.

*Stonore.* Thomas of Drax tells you that John, who was the father of Thomas the present demandant, released and quitclaimed etc. to this same Thomas against whom this writ etc. Judgment whether [Thomas the demandant] can demand aught.

*Cambridge* denied the quitclaim.

*Stonore.* You are under age, and so we tell you that you cannot be a party to trying this deed before your age.

*Cambridge.* The statute [of Gloucester] says that if an infant within age bring a possessory writ upon the seisin of his ancestor and the tenant allege feoffment or say anything else by reason of which the Justices award a jury, then, though the previous practice was that the inquest should be delayed till the infant attained his age, the inquest shall henceforth be taken at once, as though the infant were of full age, wherefore etc.

*Toudeby.* The infant is under age. Consequently even if he were willing to acknowledge such a deed you could not recover by his acknowledgment. But he can no more deny it than he can acknowledge it.

SPIGURNEL and STAUNTON JJ. We understand the statute to apply to the case where a man pleads to the points of his writ and the Justices consequently award a jury; but you are pleading solely to the right, wherefore await your judgments.

### II.

Thomas the son of Richard of Caumele brought his *nuper obiit* against Thomas of Caumele and demanded the half of a hundred acres

<sup>1</sup> Statute of Gloucester, cap. ii.

<sup>2</sup> See *Introduction*, p. xxx.

qe un Roger<sup>1</sup> uncle le avandit Thomas <sup>2</sup>le fiz<sup>3</sup> Richard et frere Thomas le tenant fut seisi de lenter etc. et de Roger descendit a Richard et a Thomas com a freres etc. pur ceo qe les tenemenz sunt departables<sup>4</sup> et de Richard descendit le dreit de sa pourpartie etc. a ceti Thomas fiz<sup>5</sup> Richard etc. qi ore demande dont Thomas de Caumele tient tot<sup>6</sup> et Thomas fiz Richard rien etc.

*Lauf.* il put rien demander qe Richard son pere par mi qi etc. en nostre seisine releassa et quitlama tot le dreit qil auoit etc. en memes les tenemenz jugement etc.

*Cant.* ceo ne est pas le fet Richard<sup>7</sup> nostre pere etc. <sup>8</sup>prest etc.<sup>9</sup>

*Lauf.* nous avoms mis avant le fet vostre auncestre en esteinant vostre dreit et vous estes deinz age qe ne poet le fet vostre auncestre conustre ne dedire <sup>10</sup>pur quei nous<sup>11</sup> prioms qe la parole targe tant qe a son age.

*Cant.* statut de Gloucester voet qe si lenfant denz age porte son bref de possession et <sup>12</sup>feffement seit mis encontre ly ou altre chose<sup>13</sup> pur quei qe Justices agardent enqeste qe mes ne seit delaie par son noun age jugement etc.

STAUNTONE. statut de Gloucester ne fet pas mencion forsqe de ael besael et cosinage et ne mie de Nuper obiit en qel bref <sup>14</sup>vous contez<sup>15</sup> et en le dreit et <sup>16</sup>ne recorriet<sup>17</sup> pas damages pur quei nous sumes point aises si en ceti bref durant son noun age puisse estre partie a trier le fet son auncestre.

*Stonore.* noun age de tenant ne de demandant ne targe pas le Nuper<sup>18</sup> obiit et ceo est de comune ley tot die le tenant qe son auncestre mourust seisi pur quei il besoigne pas qe le statut face mencion de ceo bref.

Et sic ad iudicium.

Statut avantdit ne fet pas mencion de Mordauncestre donc si la quitlame ustiste mis avant encontre acun qe le porte en la manere com avant est dit constat qil ust targe En forme de doun <sup>19</sup>vous seret ressu a vostre bref durant vostre noun age mes si vous metz<sup>20</sup> avant fet de auncestre ou chose qe chet en recorde la parole targera tant qe a son age Quare non in isto brevi Nuper obiit.

<sup>1</sup> from  $\theta$ ;  $\eta$  omits.      <sup>2-3</sup> fuis  $\theta$ .      <sup>4</sup> proportables  $\theta$ .      <sup>5</sup> le fuis  $\theta$ .  
<sup>6</sup> tut  $\theta$ .      <sup>7</sup> from  $\theta$ ;  $\eta$  omits.      <sup>8-9</sup> from  $\theta$ .      <sup>10-11</sup> e  $\theta$ .      <sup>12-13</sup> home  
mette encontre le feofment ou autre chose die  $\theta$ .      <sup>14-15</sup> home conta  $\theta$ .  
<sup>16-17</sup> home ne recouera  $\theta$ .      <sup>18</sup> super  $\theta$ .      <sup>19-20</sup> home serra ressu a son bref  
durant son nonage mais si home met  $\theta$ .



of land ; and he said that one Roger, uncle of the aforesaid Thomas the son of Richard and brother of Thomas the tenant, was seised of the whole etc. and that from Roger [the right] descended to Richard and Thomas, as to brothers etc., for the tenements were partible ; and from Richard the right in Richard's share descended to this Thomas the son of Richard, who is the present demandant ; [and of the land in demand he says that] Thomas of Caumele holds the whole and Thomas the son of Richard has naught etc.

*Lauffer.* He can demand naught, for Richard his father, through whom etc., during our seisin released and quitclaimed all the right which he had etc. in the same tenements. Judgment etc.

*Cambridge.* That is not the deed of Richard our father. Ready etc.

*Lauffer.* We have tendered the deed of your ancestor to the extinction of your own right ; and you are under age and can neither admit nor deny your ancestor's deed. Therefore we pray that the hearing may stand over till his age.

*Cambridge.* The Statute of Gloucester says that if an infant under age bring a possessory writ and feoffment or some other matter be pleaded against him by reason of which the Justices award an inquest the mise<sup>1</sup> shall not be delayed through his nonage. Judgment etc.

STAUNTON J. The Statute of Gloucester mentions only Ael, Besael and Cosinage and says naught about *nuper obiit*, the writ under which you are counting ; and you are counting as to the right and could not recover damages. Wherefore we are not of opinion that an infant during his nonage can be a party under this writ to trying the deed of his ancestor.

*Stonore.* Nonage of either tenant or demandant does not delay a *nuper obiit* according to the common law, even though the tenant say that his ancestor died seised, and so there was no need for the statute to mention this writ.

And so to judgment.

The aforesaid statute makes no mention of mortdancestor. It appears, then, that if a quitclaim were tendered as above in bar of one bringing such a writ, the hearing would be delayed. In a formedon you will be received to your writ during your nonage ; but if you tender a deed of your ancestor or aught else that is of record the hearing will stand over until your age. Why not in this writ of *nuper obiit* ?

<sup>1</sup> The *mise* was the parties' putting themselves on the jury. Coke says that the word is a term of art appropriated only to a writ of right (*Inst. I. 294b*), but it is used above in reference to a possessory writ.

NOTA.<sup>1</sup>

Nota.

En <sup>2</sup>nuper obiit<sup>3</sup> le tenant vint et dit qe le demandant fut seisi de sa purpartie sil voleit et le demandant tendi de auerer la desturbance pour les damages recouerir et fut dit par la court qil nauereit point de damages pur ceo qe son bref fut de droit mies il uoleit enquerer de la desturbance pour lamerceiment<sup>4</sup> le Roy et le jugement fut tel. Ideo preceptum est vicecomiti quod faciat inde particionem et fut dit par SPIGURNEL qe le tenant<sup>5</sup> put pas rendre pur ceo qe sa demande ne fut compris en son bref <sup>6</sup>en certeine.<sup>7</sup>

NOTA.<sup>8</sup>

Nota qe homme nauera nul uewe en un nuper obiit et est <sup>9</sup>la reison pur ceo qe le demandant fet le tenant coheir oue ly e il ne deit estre mesconissant de les tenementz dont il le fet coheir et nota<sup>10</sup> qe homme ne put my désclamer en tieu bref ne en nul autre ou la demande nest pas continue en le bref etc.

## QUARE NON ADMISIT.

LABBE DE LA BATAILE v. LE PRIOUR ECCLESIE CHRISTI.<sup>11</sup>

## Note from the Eyre Roll.

The writ summoned the Prior of Christ Church, Canterbury, guardian of the spiritualities of the archbishopric of Canterbury *sede vacante* to answer the Abbot of Battle "de placito quare cum idem Abbas nuper in Curia domini Regis coram Iusticiariis suis apud Westmonasterium per consideracionem eiusdem Curie recuperasset versus Robertum nuper Archiepiscopum Cantuariensem presentacionem suam ad ecclesiam de hauekhirst per quod mandauit Rex prefato Archiepiscopo quod non obstante reclamacione sua ad presentacionem prefati Abbatis idoneam personam ad ecclesiam predictam admitteret at postmodum pro eo quod idem Archiepiscopus dum vixit nichil inde fecit mandauit idem dominus Rex prefato Custodi quod non obstante reclamacione predicta ad presentacionem predicti Abbatis idoneam personam ad ecclesiam predictam admitteret Idem Custos ad presentacionem prefati Abbatis ad predictam ecclesiam idoneam personam non admisit in ipsius Abbatis graue dampnum et preiudicium ac mandati domini Regis predicti contemptum manifestum."

The Abbot's count was:—quod cum ipse in Octavis sancti Michaelis anno regni domini Regis Sexto in Curia sua coram prefatis Iusticiariis suis

<sup>1</sup> Note from  $\eta$  and  $\theta$ . Text from  $\eta$  collated with  $\theta$ . <sup>2-3</sup> un super [sic] obyt  $\theta$ . <sup>4</sup>  $\theta$  omits. <sup>5</sup>  $\theta$  adds ne. <sup>6-7</sup> supplied from  $\theta$ . <sup>8</sup> Note from  $\delta$  and  $\epsilon$ . Text from  $\delta$  collated with  $\epsilon$ . <sup>9-10</sup> from  $\epsilon$ ;  $\delta$  has racio pur ceo.  
<sup>11</sup> Reported by  $\alpha$ ,  $aa$ ,  $\beta$ ,  $\zeta$ ,  $\eta$ ,  $\theta$ ,  $\kappa$  and  $\lambda$ .

## NOTE.

In a *nuper obiit* the tenant came and said that the demandant was seised of his share [or could have seisin] according to his demand ; and the demandant tendered an averment of disturbance, with the object of recovering damages ; but the Court ruled that he could not get damages because his writ was in the right ; but the Court itself would inquire into the question of disturbance in view of the King's right to amercement. And the judgment was as follows :—‘ Therefore the sheriff is commanded to make a division.’ And SPIGURNEL J. said that the tenant could not surrender because the demandant's claim was not set out certainly in his writ. Note.

## NOTE.

Note that a view cannot be got in a *nuper obiit*, and the reason was that the demandant had made the tenant coheir [with himself] and it could not be supposed that he was ignorant of the extent of the tene-ments of which he had made him coheir ; and note that a man may not disclaim under such a writ nor under any other where the demand is not certainly set out in the writ etc.

## QUARE NON ADMISIT.

## THE ABBOT OF BATTLE v. THE PRIOR OF CHRISTCHURCH.

## Note from the Eyre Roll—continued.

apud Westmonasterium recuperasset presentacionem suam etc. versus predictum Archiepiscopum etc. et postea uicesimo quarto die Nouembris proximo sequente apud Lambhethe in presencia Magistri Ricardi de Brenchesle et Bertram de Suthwerk etc. liberasset eidem Archiepiscopo breue Regium quod ad presentacionem predicti Abbatis etc. idoneam personam admitteret etc. et quemdam Henricum de Hemmyngburgh clericum etc. ei presentasset etc. qui quidem Archiepiscopus dum uixit nichil inde fecit etc. per quod dominus Rex die dominica proxima ante festum Ascensionis domini ultimo preteritum in presentia quorundam fratris Alexandri de Sandwyco comonachi predicti Prioris et Reginaldi de Sutton clerici Cancelarii et aliorum etc. liberasset predicto Custodi predictum breue Regis quod non obstante reclamacione etc. ad presentacionem ipsius Abbatis ad predictam ecclesiam idoneam personam uidelicet predictum Henricum clericum admitteret Idem custos ad presentacionem predicti Abbatis ad predictam ecclesiam idoneam personam non admisit in ipsius Abbatis dampnum etc. ducentarum librarum et contemptum domini Regis mille librarum etc. et inde producit sectam etc.

The Prior's plea was :—quod non debet predicto Abbati ad istud breue nec aliquid aliud respondere etc. Quia dicit quod predictus Abbas excom-



Note from the Eyre Roll—*continued*.

municatus est etc. Et profert quasdam litteras fratris Thome Roffensis Episcopi patentes in hec verba Uniuersis sancte Matris ecclesie filiis ad quos presentes littere peruenerint Frater Thomas permissione diuina Roffensis episcopus salutem et pacem in domino sempiternam. Nouerit uniuersitas uestra quod frater Iohannes Abbas Monasterii de Bello est propter suam offensam et a diu fuit maioris excommunicacionis sententia innodatus sicut nobis constat per legitima documenta. In cuius testimonium sigillum nostrum presentibus est appensum. Date apud La Palace iuxta Londonium iij. Kalendis Decembris anno domini millesimo ccc<sup>mo</sup> xij.

The Abbot's replication was :—quod per predictas literas predicti Episcopi repelli non debet in hac parte etc. Dicit enim quod cum non fit mencio in litteris predictis quod idem Abbas est parochianus ipsius Episcopi aut sue Iurisdiccione nec aliqua causa in eisdem litteris inseritur quare predictus Abbas qui non est dicto Episcopo subditus sit excommunicatus nec eciam fit mencio in eisdem litteris quod dictus Episcopus ipsum Abbatem excommunicauerit nisi tantum quod continetur in eisdem quod dictus episcopus testatur ipsum Abbatem a diu fuisse excommunicatum sicut ei constat per legitima documenta et per quod manifeste liquet quod scriptum predicti Episcopi eidem Abbati preiudicare non debet in hac parte etc.

I.<sup>1</sup>

Quare non admisit ou le counte fut chalenge pur ceo qil ne avoit mis certain noun de clerke qe fut presente et ovesqe cel letre descumengement mis avaunt et non allocatur quia non fuit causa opposita in litera de excommunicacione et similiter quia fuit de alia iurisdictione.

En un quare non admisit porte vers le Priour de la Trinite<sup>2</sup> cantebirs gardein dil espiritualite del ercevesqe sede vacante par labbe de la Bataille et fut le counte chalenge pur ceo qil navoit paas nomee certain clerke par noun qil avoit presente. Et fut dit par HERVI<sup>3</sup> qil covendreit cel fere pour ceo qil <sup>4</sup>pount allegger nounabilite en ly par qey il ne ly deviont resceivere en escusant soun tort.<sup>4</sup>

Et puis fut allegge escomengement en la persone labbe par qei il ne dut estre respondu et letre tesgmoignal<sup>5</sup> dil evesqe de Roucestre qe voleit propter offensam manifestam.

*Hertep.* Labbe nest mie de la jurisdiction dil evesche de Roucestre ne nule conisaunce ne nule jurisdiction nad en lui. Jugement si par sa tesmoignaunce devom estre rebote.

<sup>1</sup> Text of (I) from *a* collated with *β*, *η* and *λ*. The note in *ℒ*, and in *aa* with slight variations, is :—Quare impedit. (Exceptio excommunicatus est) [*for the words in round brackets aa has ou escumengement fust*] alege e la letre le eveske de qui jurisdiction celi en qi etc. nest mye qe teumoigne lescomengement ou dist est sil ust certeine cause en la letre qil ne dut estre respondu e pur ceo qil nad [*aa adds jurie*] il deit estre respondu. <sup>2</sup> *η* adds de. Most of the MSS. so describe the defendant. <sup>3</sup> STAUNTON *η*. <sup>4-4</sup> poeit allegger nounabilite etc. *η*. <sup>5</sup> *λ* omits.

**Note from the Eyre Roll—continued.**

The Prior ‘nichil aliud dicit etc. unde petit iudicium etc.’ The Court rules that ‘littere prediote testificatorie de sententia predicta minus sufficientes sunt ad prefatum Abbatem retardandum siue repellandum a proseguendo in hac parte etc.’; and the Prior is told to plead to the merits.

His plea is:—Et Prior defendit uim et iniuriam et quideunque est in contemptu domini Regis etc. Et bene cognoscit quod ipse recepit mandatum predicti domini Regis de admittendo personam idoneam ad predictam [ecclesiam] ad presentacionem predicti Abbatis etc. sicut predictum est set dicit quod execucionem inde facere non potuit Quia dicit quod diu antequam sedes predicta Archiepiscopatus uacauit et antequam ipse fuit custos spiritualitatis eiusdem Archiepiscopatus predicta ecclesia fuit plena et consulta de quodam Magistro Iohanne de Maleuill tunc persona eiusdem ecclesie et adhuc persona impersonata in eadem ecclesia etc. unde quod nullus contemptus nec aliqua iniuria sibi in hac parte debet imputari etc. et petit iudicium etc.

Subsequently the Abbot is nonsuited.<sup>1</sup>

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I.<sup>2</sup>

*Quare non admisit* where objection was taken to the counting because the Abbot had not assigned a clerk certain as his presentee. A letter testimonial of excommunication was tendered in bar of the Abbot’s right to be heard, but was not allowed, because no cause of excommunication was assigned in it; and, further, the Abbot was not within the writer’s jurisdiction.<sup>1</sup>

In a *quare non admisit* brought by the Abbot of Battle against the Prior of the Trinity of Canterbury, guardian of the spiritualities of the Archbishopric *sede vacante*, objection was taken to the counting because the Abbot assigned no certain clerk by name as his presentee. And it was said by STAUNTON J. that this should have been done, because the Prior might desire to answer the allegation of tort by pleading the unfitness of the presentee as a reason for refusing to admit him.

And afterwards it was alleged that the Abbot was excommunicate and consequently incapable of bringing action; and a letter testimonial of the Bishop of Rochester, testifying to his excommunication *propter offensam manifestam*, was produced.<sup>3</sup>

*Hartlepool.* The Abbot is not within the jurisdiction of the Bishop of Rochester, who has no supervision of nor jurisdiction over him. Judgment whether we can be rebutted by his testimony.

<sup>1</sup> m. 9.    <sup>2</sup> See *Introduction*, p. xxxi.    <sup>3</sup> See *Sale v. Berham*, vol. ii. p. 185.

*Waling.* Contract et trespas dounount jurisdiction qe si jeo trespas en <sup>1</sup>la jurisdiction<sup>1</sup> le Evesche de Nichole et sui dil Evesche de Norwyche<sup>2</sup> par cele escomengement si serrai rebote <sup>3</sup>si ele seit tesmoigne.<sup>3</sup>

HERVI. si levesqe eit certeine cause descomengement<sup>4</sup> teumoigne par sa letre vous dettes bien mes en ceste tesmoynance nest nule cause.

*Cant.* tut eut il cause et la partie voleit trauverser ceo ne sereit pas ple a ceste court dount ceste court ceo prendra a la tesmoynance de levesqe et sil eit fausement teumoigne<sup>5</sup> il avera soun recoverir en la cour chrestiene ou par apel sil eit <sup>6</sup>fausement escomenge.<sup>6</sup>

HERVI. en cas de capcioun il covient qe le evesqe tesmoigne lescomengement et gil soit de<sup>7</sup> sa iurisdiction<sup>8</sup> et autrement navera il mie le capcioun et dautre part qaunt nous escrivoms a levesqe de qi qe ceo soit nous mettons le cause et qaunt nous voloms aver eide de eux ou les certefier de rien e<sup>9</sup> si deivont il escrivere a la court le Roi et pur ceo responez pur ceo qe le Roi est ensement partie etc.

II.<sup>10</sup>

Quare non  
admisit.

Le Abbe de la Batayle porta son quare non admisit vers le Priour de la Trinite de Cantebirs e counta Ceo vous moustre le Abbe de la Batayle par son attorne qe cy est qe le priour de la Trinite de la eglise de Cantebirs gardayn delespiritualte del Erscevesche de C. le see vacante qy ilokes est<sup>11</sup> qe la ou le avaunt dit Abbe recoverit le<sup>12</sup> presentement de la eglise de H.<sup>13</sup> en la court nostre seynur le roy devaunt sire W. de Bereford e ses compaynons vers un R. Erceveske etc. par quey il avoit bref <sup>14</sup>a R. Ersveske de C.<sup>14</sup> nient encontre esteaunt le cley<sup>15</sup>m<sup>15</sup> lavaunt dit R. qyl resceu son presente etc. la vynt <sup>16</sup>meym cesti<sup>16</sup> Abbe <sup>17</sup>le livera<sup>17</sup> al avaunt dit R. Erceveske<sup>18</sup> comaundement nostre seynur le Roy de resceyver son presente certeyn jour certeyn an a Lambehud<sup>19</sup> par un Jon de T. en presence un T. <sup>17</sup>et R.<sup>17</sup> etc. il en despit nostre seynur le Roy <sup>20</sup>e de son comaundement<sup>20</sup> son presente resceyver ne voleit par quey il swit un attachement vers meyme cesti Robert pendaunt quel

<sup>1-1</sup> *Supplied from λ.*

<sup>2</sup> Hertford λ.

<sup>3-3</sup> λ omits.

<sup>4</sup> λ omits.

<sup>5</sup> from β; etc. α; escmunge η.

<sup>6-6</sup> from λ; α and β have par escomengement.

<sup>7</sup> η omits.

<sup>8</sup> η ends here.

<sup>9</sup> *Supplied from β.*

<sup>10</sup> Text of (II)

from κ collated with ζ.

<sup>11</sup> ζ adds etc.

<sup>12</sup> son ζ.

<sup>13</sup> Hakerug ζ.

<sup>14-14</sup> al Erceveske de Cant. R. ζ.

<sup>15</sup> chartre ζ.

<sup>16-16</sup> le avaunt dist ζ.

<sup>17-17</sup> ζ omits.

<sup>18</sup> ζ adds e li livera le.

<sup>19</sup> Lsmhith ζ.

<sup>20-20</sup> ζ omits.



*Wallingford.* Contract and trespass confer jurisdiction, so that, though I be subject to the jurisdiction of the Bishop of Norwich, yet if I commit trespass within the jurisdiction of the Bishop of Lincoln I can be rebutted by the Bishop of Lincoln's testimony should he testify against me.

STAUNTON J. What you say would be correct if the Bishop in his letter had assigned a definite reason for the excommunication, but in this testimonial no cause is assigned.

*Cambridge.* Even if the Bishop had assigned cause, yet, if the defendant desired to traverse it, that would not be a plea which this court could receive, for it would accept the testimony of the Bishop; and, if the Bishop's testimony should be false, the defendant would have his remedy in Court Christian, or by appeal, if the Bishop had improperly excommunicated him.

STAUNTON J. If it were a question of a *capias* we should require not only the Bishop's testimony of excommunication but also proof of the fact that the defendant was within his jurisdiction; and, short of this, he would get no *capias*. And, besides this, when we write to a Bishop about anything and desire to have his assistance or to certify him of aught we set out the matter certainly, and so ought a Bishop to do when he writes to the King's Court. And so answer, for the King is also a party etc.

## II.

The Abbot of Battle brought his *quare non admisit* against the Prior of Trinity of Canterbury and counted after this fashion:—The Abbot of Battle by his attorney—who is here—showeth you the Prior of the Trinity of the church of Canterbury, guardian of the spiritualities of the Archbishopric of Canterbury *sede vacante*—who is there. Whereas the aforesaid Abbot recovered the presentation to the church of H. in the court of our lord the King before Sir W. Bereford and his companions against R. Archbishop etc. and by reason thereof obtained a writ directed to R. Archbishop of Canterbury to the effect that he the said Archbishop, notwithstanding his own claim to the presentation, should admit his, the Abbot's, presentee etc., and whereas the said Abbot went and served upon the aforesaid Robert, Archbishop etc., at Lambeth, upon such a day in such a year, by the hands of one John of T. in the presence of one T. and one R. etc. the command of our lord the King to admit his, the said Abbot's, presentee, yet he the said Archbishop did, in despite of our lord the King and his commandment, refuse to admit his, the said Abbot's, presentee; by reason of which refusal he, the said Abbot, sued an attachment against the aforesaid

Quare non  
admisit.

play<sup>1</sup> R. morust par quey <sup>2</sup>le avaunt dit Abbe swit autre bref vers lavaunt dit priour gardayn del espiritualte etc.<sup>3</sup> e le see vacante de resceyver son presente e en la presence de T. e C. par un Robert de Bardon certeyn jour e an en la eglise de la Trinite il resceyver ne voleit eynz le refusa en despit du roy e de son comaundement a tort e ses damages <sup>4</sup>de cc. li. si R. Priour de la Trinite etc. de Cantebirs.

Le Priour de la Trinite de la eglise de Cantebirs gardayn etc. ut supra par son attorne qe cy est defend tort e force etc. e<sup>4</sup> vous dit qyl <sup>5</sup>ne entente mie<sup>5</sup> qe vous voyllez ceo play tenir qar nostre seynur le Roi vous ad maunde qe vous mettez en respit touz les pleez qe ly touchent tanke a fyne de cest eyre <sup>6</sup>par son bref fors soulement des pleez qe touchent ly meyme.<sup>6</sup>

STAUNTON. ceo est un quare non admisit ou le Roy se deit fere partie par son comaundement e pur ceo ditez outre.

*Cant.* <sup>7</sup>defendit ut supra e<sup>7</sup> dit qe quant a ore a nule manere de play deit il estre respondu e par la rescu qe<sup>8</sup> cely abbe est escomange.

E mist avaunt lettre le Eveske de Roucestre qy ceo tesmoygna.

*Hertilp.* la lettre voet qe frater Iohannes Episcopus etc. ou de reson ceo ne serroit<sup>9</sup> mie <sup>10</sup>son noun de dignite<sup>11</sup> fut il frer ou altre home de religion e de ceo prioms etc.

STAUNTON. <sup>12</sup>dites outre<sup>12</sup> chescun lettre de escumengement deit aver certeyn cause mes en cele etc.

E fut la lettre lue qe voleit qyl fut escomange propter contumaciam<sup>13</sup> etc. par quey fut dit qyl diseint outre.

*Hertilp.* lettre de escumengement ne fet nule persone estre noun responsable si ele ne seit lettre de<sup>14</sup> Evesqe en qy dyoces<sup>15</sup> il est en<sup>16</sup> jurisdiccio<sup>17</sup> demoraunt mes le Abbe de la Bataylle nest mie de la jurisdiccio le Eveske de Roucestre ne de sa deoces par quey nous nentendoms mie qe par sa lettre poums<sup>18</sup> estre rebotez.

*Pass.* quele lettre qyl mette avaunt e de quel ordinarie qe ceo seit

<sup>1</sup> bref ζ.      <sup>2</sup> ζ adds mort.      <sup>3</sup> del erceveschee ζ.      <sup>4-4</sup> etc. *Cant.* le  
 Prior ζ.      <sup>5-5</sup> nentendi ζ.      <sup>6-6</sup> ζ omits.      <sup>7-7</sup> ζ omits.      <sup>8</sup> qar ζ.  
<sup>9</sup> serra ζ.      <sup>10-11</sup> sa dedignacion ζ.      <sup>12-12</sup> ζ omits.      <sup>13</sup> contumaxise ζ.  
<sup>13</sup> ζ adds Erceveke en qi province il est ou lettre de.      <sup>15</sup> province ζ.  
<sup>15-16</sup> ou en qi ζ.      <sup>17</sup> ζ adds il est.      <sup>18</sup> devoms ζ.

Robert, during the pendency of which the aforesaid Robert died ; and thereupon the aforesaid Abbot sued out another writ against the aforesaid Prior as guardian of the spiritualities etc. *sede vacante* and served it upon him in the church of the Trinity by one Robert of Bardon in the presence of T. and C. upon a certain day and year, commanding him to admit his presentee, yet the said Prior would not admit him but wrongfully refused to admit him in despite of the King and his commands, by which refusal of the said Prior of the Trinity etc. of Canterbury he, the said Abbot, has suffered damage in the sum of two hundred pounds.

The Prior of the Trinity of the church of Canterbury, guardian etc. *ut supra*, by his attorney who is here, denies wrong and force etc. and tells you that he is of opinion that you cannot entertain this action, for our lord the King has sent his commands to you by his writ to respite until the end of the Eyre all pleas touching the Prior excepting those only to which the King himself is personally a party.

STAUNTON J. This is a *quare non admisit* to which the King is personally a party within the meaning of his commands ; and therefore plead over.

*Cambridge* denies as above, and says that in no plea whatsoever is the Abbot entitled to an answer, by reason that the said Abbot is excommunicate.

And he tendered a letter from the Bishop of Rochester testifying this.

*Hartlepool*. The letter says that ' Friar John, Bishop etc.' <sup>1</sup> But such a designation does not infer jurisdiction over a friar or other professed religious,<sup>2</sup> and of this we ask judgment.

STAUNTON J. Plead over. Every letter [testimonial] of excommunication should set out a definite reason [for the excommunication], but in this one etc.

The letter was thereupon read and it stated that the excommunication was by reason of contumacy ; and therefore *Hartlepool* was told to plead over.

*Hartlepool*. No person loses his right to an answer by effect of a letter [testimonial] of excommunication unless it be a letter from the Bishop of the diocese in which such person is and within whose jurisdiction he is. Now the Abbot of Battle is not within the jurisdiction of the Bishop of Rochester nor is he within his diocese. Wherefore we submit that we cannot be put out of Court by the Bishop's letter.

*Passeley*. Any letter whatever that is produced, coming from any ordinary competent to testify to excommunication, is sufficient to put

<sup>1-2</sup> This is a very free translation of the text, but seems the only intelligible rendering of it.



qe puysses tesmoygner escomengement suffit a vous rebotere si vous ne seyez exemptes par le apostole demandoms jugement.

*Hertilp.* chescun escomengement qe serra tesmoygne si covient qe cely qe tesmoygne eit jurisdiction en la partie<sup>1</sup> par un de deux veyes ou pur ceo qyl seit de sa dyoces etc. reseaut deynz son power ou <sup>2</sup>qyl fut partie au play devaunt ly plede<sup>2</sup> par quey etc. mes nous dioms qe le Abbe de la Batayle nest mie de sa dyoces ne il dit mie en sa lettre qyl fut<sup>3</sup> devaunt ly en play qe serrait cause de la tesmoygnaunce fere par quey <sup>4</sup>demandoms jugement<sup>4</sup> etc.

*Ingham.* nous dioms qe labbe de la Batayle fut enplede etc. prest etc.

*Hertilp.* a ceo ne avendrez mie qar vostre lettre deit expressement assigner la cause qe deurreit power al evesqe de escomengement.

STAUNTON <sup>5</sup>ad idem<sup>5</sup> excepcion de escomengement est si heynuse<sup>6</sup> en say e la tesmoygnaunce e la lettre qe vous mettez avaunt si est de autri fet dount vous averrez<sup>7</sup> chose <sup>8</sup>de proverer<sup>9</sup> autri fet saunz aver expresse cause en vostre lettre par quey il fut escomenge ne <sup>10</sup>serroit mie resone de ly rebotere<sup>10</sup> de accion par quey respondes outre.

*Cant.* <sup>11</sup>defendit etc. e dit qy<sup>11</sup> la ou il unt counte la ou lavantdit Abbe avait presente il cel presente encontre comaundement nostre seigneur le Roy <sup>12</sup>resceyver ne voleit<sup>12</sup> e ne dit mie le noun de cel presente en counte counte<sup>13</sup> demandoms jugement.

*Hertilp.* Assez en contaunt avoms dit e assigne cause de damage pur ceo qe vous refusastes nostre presente etc.

*Cant.* Si vous ussez<sup>14</sup> en contaunt assigne certeyn persone nous purroms aver este de ly<sup>15</sup> a issue de play com aver dit qyl ne fut mie able e assigne cause etc.

STAUNTON. nous ne voloms mie son counte abater ne son bref pur ceo qe le Roy se fet partie par son comaundement en despit de ly<sup>16</sup> respondes outre.

SPIG. Ieo pose qe vous vousez<sup>17</sup> dire qyl navoit nul tiel presente sil eust nome son noun en <sup>18</sup>counte counte<sup>19</sup> serrez vous resceu a tiel

<sup>1</sup> persone ζ. <sup>2-2</sup> qe le plee fut plede devant li a qi labbe fut partie ζ.  
<sup>3</sup> ζ adds enplede. <sup>4-4</sup> ζ omits. <sup>5-5</sup> ζ omits. <sup>6</sup> henyous ζ. <sup>7</sup> daverer ζ.  
<sup>8-9</sup> aprouer ζ. <sup>10-10</sup> seriez mie resonaliter rebotre ζ. <sup>11-11</sup> ζ omits.  
<sup>12-12</sup> refusa ζ. <sup>13</sup> countaunt par quei ζ. <sup>14</sup> ζ adds counte. <sup>15</sup> ζ adds  
a issu et. <sup>16</sup> ζ adds par quei. <sup>17</sup> voudrez ζ. <sup>18-19</sup> countant ζ.

you out of Court unless you can show that you are exempted by the Pope. We ask judgment.

*Hartlepool.* Any letter testimonial of excommunication should show by one of two ways that the witness has jurisdiction over the person affected ; declaring either that such person is of his diocese etc. abiding within his jurisdiction, or that he was a party to an action pleaded before him, by reason whereof etc. Now we say that the Abbot of Battle is not of the Bishop's diocese ; and the Bishop does not say in his letter that the Abbot was party to an action pleaded before him, so that the Bishop would become entitled to bear testimony. And therefore we ask judgment etc.

*Ingham.* We tell you that the Abbot of Battle was impleaded etc. Ready etc.

*Hartlepool.* To that you will not get, for your letter ought to state explicitly the reason by which power of excommunication accrued to the Bishop.

STAUNTON J., *ad idem.* An exception of excommunication is of the most serious import ; <sup>1</sup> and since the letter testimonial which you tender is but the secondary evidence of another instrument which says nothing definite as to the reason for which the Abbot was excommunicated we do not think that we can reasonably refuse the Abbot a hearing.<sup>2</sup> Wherefore answer over.

*Cambridge* denies etc. and says that whereas they have counted that the aforesaid Abbot presented his presentee and that the Prior refused to admit him in despite of the command of our lord the King, yet the Abbot in counting his count did not state the name of his presentee. We ask judgment.

*Hartlepool.* We said all that was necessary in our counting and we assigned the cause of our damage to your refusal to admit our presentee etc.

*Cambridge.* If in your counting you had named a person certain we might have taken our issue thereupon, pleading, for example, that he was not a fit person, and shown cause etc.

STAUNTON J. We cannot abate either the counting or the writ, for the King is personally a party, and the wrong alleged is alleged to be done in his despite. Answer over.

SPIGURNEL J. I put the case that the Abbot had named a person certain in counting his count, and that you had then proposed to deny that he had ever presented such a person ; would you have been received to such an issue ?—*inferring that he would not.* But you can

<sup>1-2</sup> I think it well again to call attention to the necessarily free rendering of the text.

issue quasi diceret non mes ceo vendra de vous par vey de respons si vous vodrez alegger noun ablete en le presente etc.

*Cant.* le bref fet<sup>1</sup> prior de la Trinite ou son droit noun est Prior Ecclesie Christi. Jugement de bref.

STAUNTON. respondes outre.

*Cant.*<sup>2</sup> il dit qe le abbe de la Batayle recoveri le presente etc. per consideracionem curie e ne dit mie par quel bref desicom e cest un bref de jugement en son cas e fundu sur outre original par quey le bref est vicious e demandoms jugement.

*Hertilp.* assez est la cause de damages recoverer assigne en nostre bref eo quod per consideracionem curie etc.

E puy fut chace outre.

*Cant.*<sup>3</sup> defendit et dit<sup>3</sup> en sa persone com gardeyn ne pout il tort assigner ne damages vers ly recoverer qar en tens Robert Erceveske etc. la eglise fut pleyne par un Meth<sup>4</sup>er John de Monvill e il com gardayne trova cel eglise playne e unkor est pleyne de si com en nostre tens ne puet il dire qe el fut pleyn par nous eynz nous la trovames en tiel estate quant nous entrames e quel estate avoms<sup>5</sup> continue Jugement etc.

*Hertilp.* de qy<sup>6</sup> fut cesti Meth<sup>4</sup>er Jon presente<sup>6</sup> e devaunt qy.

*Cant.* a ceo navoms mester a respondre qar nous ne pouns plus haut pleder<sup>7</sup> qe del<sup>7</sup> tort qe vous nous surmettez si noun de nostre tens de quel estate nous trovames la eglise seisi.

*Hertilp.* vous ne poez de mellyour condicion estre qe ne serrait cesti sil fut en vie apres qy mort vous clamez la garde mes si le bref fut porte devers ly il usereit mie cel respons sanz dire de qy presente<sup>8</sup> Item nostre recoverer se fit vers Robert Ersveske etc. qy estate etc. par quey vous de son estate plustost respondrez qe si nostre recoverer sey vst fet vers un estraunge.

### III.<sup>9</sup>

Labbe de la Battaile porta son quare non admisit vers le Prior de Christchurch de Canterborie a quel bref fust dit qe Labbe ne dust estre receave pur ceo qe il fust escomenge et le bref Levesqe de

<sup>1</sup> deit nomer le ζ. <sup>2</sup> from ζ. κ makes what follows part of STAUNTON J.'s speech. <sup>3-5</sup> ζ omits. <sup>4</sup> Mestre ζ. <sup>5</sup> ζ adds unqore. <sup>6-8</sup> presentement fut mestre [Jon] rescu, ζ. <sup>7-7</sup> de cel ζ. <sup>8</sup> ζ adds par quei demandoms jugement. <sup>9</sup> Text of (III) from θ.



make your objection in your answer if you want to raise the unfitness of the presentee.

*Cambridge.* The writ describes the defendant as Prior of the Trinity, whereas his proper designation is Prior of Christ Church. Judgment of the writ.

STAUNTON J. Answer over.

*Cambridge.* He says that the Abbot of Battle recovered the presentation by judgment of the Court, and he does not say under what writ. Consequently this present writ, since it is a judicial writ founded upon another and original writ, is bad. And we ask judgment.

*Hartlepool.* We have sufficiently assigned the cause of our en-damagement in our writ in the statement *eo quod per consideracionem curie etc.*

And afterwards it was ruled that he must answer over.

*Cambridge* denies and says :—The Abbot cannot assign tort to and recover damages from the Prior in his character of guardian [of the spiritualities], for in the time of Robert, Archbishop etc. the church was filled by one Master John of Monvill, and the Prior, as guardian, found the church filled and it still is filled ; and so the Abbot cannot say that it was filled by us in our time, for as we found it when we entered so have we continued it. Judgment etc.

*Hartlepool.* By whom was this Master John presented, and in whose presence ?

*Cambridge.* We are under no obligation to answer that, for we cannot plead aught that does not touch our own time and the condition in which we found the church in answer to the tort which you assign to us.

*Hartlepool.* You cannot be in a better position than he would be, if he were still alive, through whose death you claim the guardianship ; and if this writ had been brought against him he could not have availed himself of such a plea without saying by whom [the present incumbent was] presented. Further, our recovery was gotten against Robert, Archbishop etc. whose estate etc. Consequently you must answer more fully on his behalf than if our recovery had been gotten against a stranger to you.

### III.

The Abbot of Battle brought his *quare non admisit* against the Prior of Christ Church, Canterbury. Objection was taken upon the writ that the Abbot ought not to be received, as he was excommunicate ; and a

Rochester mis auant a le Corte qe ceo temoigne qe voleit qe il fust escomenge propter manifestam offensam etc.

*Hertep.* ceste bref ne doit ceo plee targer qar ele ne temoigne pur certain cause dlescungement [*sic*] et estre ceo la Lettre ne temoigne point qe Labbe soit des [*sic*] diocesse ne de sa Iurisdiccion par qi il ne pust estre sauns iugement.

STAUNTON. si Levesqe sertefiait la Cort le Roie qe Labbe ust este escunng xl. iors si la Lettre ne temoigne qe Labbe fust de sa disseise [*sic*] il naueroit pas bref hors de la Chauncerey a Visconte de prendre son corps si ceo ne fust la lettre Metropolitane du lieu qe dErsevesqe.

### QUOD PERMITTAT.

#### SPELMENDENNE v. ABBE DE POUNTROBERD.<sup>1</sup>

Quod  
permittat.

Nicholas Ettabrugelond porta son quod permittat vers Johan Abbe Pountroberd saunz ceo qe le bref voleit quod pertinet et sanz certain nombre de auers qe sont diuerse en lour cas.

*Malm.* Nicholas vostre pere de qi seisine etc. auoit .ij. fiz cete Nicholas qi ore porte cete bref et un Adam qi ne est pas nome demandant en cete bref jugement si sanz son parcener deiue estre respondu.

*Stonore.* Nous demandoms par cete bref qe est un droit nient partable donc a nomer Adam en ceci bref pur qi noun sute resecever nous deperireit pur ceo qe la demande ne put estre seure. Jugement si par tant etc.

*Pass.* Vostre bref suppose qe vous estes heir donc si vous avet coheir vostre bref suppose un faus.

Et puis il weiuerent cet excepcion.

*Pass.* Vous auet porte vostre bref quod permittat de comune pasture sanz dire quod pertinet etc. ou vostre bref prove vostre demande estre franc fee et nient apurtenant a terre en Gauelkynde et vous dioms qe vous auez un frere Adam eyne de vous en pleine vie jugement si viuant ly respons pusez demander.

Et les altres issèrent de enparler etc. et pur ceo qil auoit porte son bref a recouerer comune de pasture com un gros sanz apurtenant etc. a terre de Gauelkynde et auoit fet son conte acordant a son bref et fet la decente a Nicholas com a soul heir ou il aueint troue par examinent qe la comune fut apurtenant a terre de Gauelkynde et sil est atendu

<sup>1</sup> Reported by *η* only. Names of the parties from E.R. For the record see Appendix A, p. 213.

letter from the Bishop of Rochester was tendered in Court testifying that the Abbot was excommunicate by reason of notorious offences etc.

*Hartlepool.* This letter ought not to stay our action, for it assigns no definite reason for excommunication. Further than this, the letter does not state that the Abbot is of the Bishop's diocese nor within his jurisdiction, and these omissions make it of none effect. Judgment.

STAUNTON J. Though the Bishop should certify the King's Court that the Abbot had been excommunicate these forty days past, yet would he not get a writ out of Chancery directing the Sheriff to attach the Abbot's person unless the letter stated that he was of his diocese; nor would he get it the more if he that wrote the letter were Metropolitan rather than suffragan.

### QUOD PERMITTAT.

#### SPELMENDENNE v. THE ABBOT OF ROBERTSBRIDGE.

Nicholas Ettabrugelond brought his *quod permittat* against John, Abbot of Robertsbridge, but his writ omitted to say *quod pertinet* and did not assign the certain numbers of the several kinds of cattle. Quod permittat.

*Malmerthorpe.* Nicholas, your father, of whose seisin etc. had two sons, namely, this Nicholas who now brings this writ, and one Adam who is not joined as a demandant in this writ. Judgment whether Nicholas is entitled to an answer without his parcener.

*Stonore.* By this writ we are claiming a right that is not partible. Consequently to name Adam in the writ might be fatal to us by causing us to be nonsuited, for our demand is not partible. Judgment whether for such etc.

*Passeley.* Your writ supposes that you are [sole] heir. If, then, you have a co-heir your writ presumes what is false.

Afterwards he waived this exception.

*Passeley.* You have brought your writ of *quod permittat* to recover common of pasture without saying '*quod pertinet* etc.' in a case where your writ shows that your demand is for a freehold and not for a right appurtenant to Gavelkind land. Now we tell you that you have an elder brother Adam living. Judgment whether in his life time you can demand an answer.

And the other side went out to imparl etc. And because Nicholas had brought his writ to recover common of pasture as a gross and not as appurtenant etc. to Gavelkind land and had counted in accordance with his writ, and had made the descent to himself as sole heir, whereas it was now found by examination that the common was appurtenant to Gavelkind land, he was nonsuited, for if he had abided judgment



jugement sur cet excepcion il ne poit pas auer vse sa accion ou ceus par consequens com apurtenant a terre etc. pur ceo qe suant auoit suppose franc fee par son purchace demene il fut non sui.

## QUO WARRANTO.

REX *v.* YNGE ET KIRIEL.<sup>1</sup>

### Note from the Eyre Roll.

Willelmus Ynge et Nicholaus Criel summoniti fuerunt ad respondendum Domino Regi de placito quo waranto clamant habere visum franci plegii in manerio suo de Eynesford cum omnibus que ad visum illum pertinent Emendas assise panis et ceruisie fracte pillorium Tumberellum furcas Infangenthes et unam feriam semel in anno et unum mercatum qualibet septimana per diem veneris et omnia alia que ad feriam et mercatum pertinent et liberam Warennam in omnibus dominicis terris suis manerii predicti et emendas assise panis et ceruisie fracte in manerio suo de Hegtham pillorium Tumberellum et Warennam in omnibus dominicis terris suis eiusdem manerii et Emendas assise panis et ceruisie fracte in manerio suo de Stanstede pillorium Tumberellum et liberam Warennam in omnibus dominicis terris suis eiusdem manerii etc.

The answer of William and Nicholas, who appeared by their attorney, was:—quod ipsi et antecessores ipsius Nicholai et omnes tenentes maneria

Quo Warranto ou deux clament franchise et dit fut pur le Roi qun deux entra par succession e lautre par purchase e demande jugement si enz pount joindre de clamer.

Quo  
waranto.

Sire Willem Inge et Nichol Kiryel furent somons a respondre <sup>2</sup>al roi <sup>3</sup>de play<sup>4</sup> par qel garant<sup>5</sup> ils cleiment avoir fraunk garenne vewe de fraunk plege et qaunt qe a vewe apent<sup>6</sup> amendes<sup>7</sup> de payn et de cervoise<sup>8</sup> Pillory et Tumbrel<sup>9</sup> en lour manoir de B.<sup>10</sup> et par qel garant<sup>11</sup> ils cleiment davoir tieles<sup>12</sup> fraunchises en lour maner de T.<sup>13</sup>

Westcote. veez<sup>14</sup> ci<sup>15</sup> W. Inge en propre persone et N. par attorne qi vous dient<sup>16</sup> qe eux et tous les<sup>17</sup> terrestenantz ount<sup>18</sup> use les fraunchises avaunt ditz com apendant as manoirs<sup>19</sup> avaunt ditz de temps dount ni ad memoire.<sup>20</sup>

Hertepol <sup>21</sup>il cleiment sire davoir les<sup>22</sup> fraunchises par prescripcioun

<sup>1</sup> Reported by aa, β, γ, δ, η and κ. Text from γ collated with the others. Head note from β. <sup>2-4</sup> β omits. <sup>3-4</sup> δ omits. <sup>5</sup> η adds le prochain eyre. <sup>6</sup> β adds des. <sup>7</sup> amendement aa. <sup>8</sup> servoise a; servoyse β. <sup>9</sup> tumberrol aa; tumerol β. <sup>10</sup> W. η, κ. <sup>11</sup> aa omits. <sup>12</sup> autiel aa, β. <sup>13</sup> C. aa, β, κ. <sup>14</sup> vous avez aa, β, δ, κ. <sup>15</sup> aa omits. <sup>16</sup> dient aa; diount β. <sup>17</sup> lur aa; lour β. <sup>18</sup> κ adds en et. <sup>19</sup> lour terres η. <sup>20</sup> memoire aa, β. <sup>21-22</sup> Sire jeo vey bien coment il clamerent ceste δ.

upon the exception taken he would have lost his right of action to claim the common as appurtenant to Gavelkind land, seeing that he had claimed it as freehold by his own purchase.

## QUO WARRANTO.

### THE KING *v.* INGE AND CARROL.

*Note from the Eyre Roll—continued.*

predicta a tempore quo non exstat memoria habuerunt libertates predictas et illi hucusque usi sunt et eo warranto clamant libertates predictas etc.

*Hartlepool's* replication on behalf of the King was :—quod predicti Willelmus et Nicholaus coniunctim clamare non possunt libertates predictas in hac parte etc. dicit enim quod predictus Willelmus est extraneus perquisitor etc. et petit iudicium si predictus Nicholaus statum heredis in predictis maneriis per descensum hereditarium etc. et predictus Willelmus perquisitor coniunctim clamare possint diuersis titulis etc. scilicet predictus Nicholaus titulo successionis etc. et predictus Willelmus titulo perquisiti etc. predictas libertates regias quarum quilibet est unum integrum etc.

The roll says nothing as to the Court's judgment on the point raised by *Hartlepool*; and a jury—the jurors of the hundred of Akestan—finds 'quod predicti Willelmus et Nicholaus et omnes antecessores predicti Nicholai et omnes tenentes maneria predicta a tempore quo non exstat memoria hucusque habuerunt libertates predictas et illis sine interrupcione usi sunt.

Ideo predicti Willelmus et Nicholaus inde sine die saluo iure Regis etc.'<sup>1</sup>

*Quo warranto* where franchises were claimed by two jointly, and it was said on behalf of the King that the one entered by succession and the other by purchase; and judgment was asked whether they could claim jointly.

Sir William Inge and Nicholas Carrol were summoned by a writ of *quo warranto* to show by what warrant they claimed to have free warren, view of frankpledge, together with what appertains to such view, correction of [breach of assize] of bread and beer, pillory and tumbrel in their manor of B.; and by what warrant they claim to have the like franchises in their manor of T. Quo Warranto.

*Westcote.* See here W. Inge *in propria persona* and N. by his attorney, and they tell you that they and all who have held the lands have enjoyed the aforesaid franchises as appendant to the manors aforesaid from a time to the contrary of which memory runneth not.

*Hartlepool.* They claim, Sir, to have the franchises by prescription

<sup>1</sup> m. 127 d.

etc. et <sup>1</sup>Jeo vey<sup>2</sup> qe sire<sup>3</sup> Nicholas est einz <sup>4</sup>en les maners<sup>4</sup> par descente<sup>5</sup> de heritage et Sire W. Inge est purchaceor <sup>6</sup>et ceo sount diverses estate <sup>7</sup>et demande<sup>8</sup> jugement pur le roi si<sup>9</sup> purchaceor et<sup>10</sup> heir<sup>11</sup> se pusedt joyndre en cest<sup>12</sup> cleym.

HERVI. <sup>13</sup>nous veoms bien coment<sup>14</sup> vous clamez ceste fraunchise<sup>15</sup> qest une chose<sup>16</sup> entiere qi ne peut mie estre severee <sup>17</sup>et William est purchaceor et Nicholas est entre par successioun<sup>18</sup> par qey a nous est ore<sup>19</sup> a veer si vous deux qi avez diverses estats poez joyndre en clamaunt <sup>20</sup>cele fraunchise qest <sup>21</sup>une en lui memes.<sup>22</sup>

*Westcote* coment qe les maners poent estre partiz<sup>23</sup> la fraunchise <sup>24</sup>ne peut mie estre departie<sup>24</sup> etc.

### REX v. BADELSMERE.<sup>25</sup>

#### Note from the Eyre Roll.

Bartholomeus de Badelsmere summonitus fuit ad respondendum domino Regi de placito quo Waranto clamat habere in manerio suo de Chilham Hundredum de Felebergh in communi cum priore ecclesie Christi Cantuarie tenendum bis per annum in quo presentabuntur omnes articuli visus franci plegii et habere proficua inde prouenencia et etiam in eodem manerio Infongenthef furcas pillorium tumbrellum et theu et quod omnes districciones capte per ballium Regis stabunt et morabuntur in parco suo apud Chilham per tres dies et tres noctes antequam abducantur. Et quod nulla districcio seu summonicio fiat in dicto hundredo per aliquem ballium sine bedello manerii predicti nisi sit per defectum dicti bedelli. et habere nundinas in predicta villa de Chilham incipientes in vigilia assumptionis beate Marie duraturas per octo dies sequentes et mercatum qualibet septimana per diem Martis et eciam habere liberam Warennam in omnibus dominicis terris suis manerii predicti et eciam quod ipse et omnes tenentes sui de honore de Chilham sunt liberi et quieti in villa Douorie de theloneo et passagio pro qua libertate habenda clamat esse amirallus eiusdem ville. et eciam habere hundredum in manerio suo de Whitstaple et habere omnes presentationes articulorum visus franci plegii et proficua inde prouenencia Infongenthef furcas pillorium tumbrellum et theu et eciam <sup>26</sup>omnimodas districciones captas per balliuos Regis in parco suo ibidem commorabuntur<sup>27</sup> per tres dies et tres noctes antequam abducantur et quod nulla districcio seu summonicio

<sup>1-2</sup> Vous veiez bien coment il cleyme cestes franchises par prescripcion et vous veiez aa ; Jeo vee bien qil clama cetes franchises et jeo vee β. <sup>1-3</sup> κ omits.  
<sup>4-4</sup> aa omits. <sup>5</sup> succession δ. <sup>6-10</sup> et cely quest δ. <sup>7-8</sup> per quoi nous demandoms aa, β. <sup>9</sup> η adds estrange. <sup>9-10</sup> celi quest purchaceor et celi quest aa, β. <sup>9-11</sup> κ omits. <sup>11</sup> celi quest heir et priue de sank η. <sup>12</sup> une δ, η. <sup>13-14</sup> from aa, β, δ. <sup>14-15</sup> chose κ. <sup>15</sup> aa, β add et. <sup>17-18</sup> κ omits. <sup>15</sup> aa, β add de heritage. <sup>19</sup> aa, β omit. <sup>20-22</sup> etc. κ. <sup>21-22</sup> un un ut supra η. <sup>22</sup> aa, β add ut supra. <sup>23</sup> departiz aa ; departies β. <sup>24-24</sup> iammes qest un κ. <sup>25</sup> Reported by aa, β, γ, δ, η and κ. Text from γ collated with the others. Head notes from aa. <sup>26-27</sup> sic.



etc. and I see that Sir Nicholas holds the manors by descent of heritage and Sir William Inge by purchase, and these be different estates, and I ask judgment on behalf of the King whether purchaser and heir may join themselves in this claim.

STAUNTON J. We observe how you are claiming this franchise which is an integral unity that cannot be divided; and William is a purchaser and Nicholas entered by succession. We have, therefore, to consider now whether you two persons who have different estates can join in claiming this franchise which is indivisible.

*Westcote.* Though the manors may be divided the franchise cannot be divided etc.

### THE KING *v.* BADLESMERE.

Note from the Eyre Roll—*continued.*

fiat ibidem per aliquem ballium absque bedello eiusdem manerii nisi per defectum eiusdem bedelli et quandam libertatem in villa Cantuarie pertinentem ad dictum manerium suum de Whitstaple quod omnes tenentes sui piscarii habebunt quandam placeam in regia strata inter ecclesiam omnium sanctorum et ecclesiam Sancti Andree continentem in longitudine quater viginti pedes et in latitudine tres pedes ad pisces eorum vendendas absque tolne tolicui dando et eciam Theolonium de quibuscunque mercandis ariuantibus super terram suam dominicam eiusdem manerii et liberam Warennam et Wreccum maris in manerio suo predicto et omnia amerciamenta de omnibus tenentibus suis manerii sui de Kyngestone iuxta Berham amerciatis in hundredo de Kynghamford et liberam Warennam in omnibus dominicis terris suis manerii sui predicti et quod omnes districciones capte per ballium Regis [etc. *ut supra*] et tenere duas laghedayas in manerio suo de Rudelingwell per annum et habere omnes presentationes articulorum visus franci plegii et proficua inde prouenencia pillorium tumbrellum et eciam Wreccum Maris ibidem et quod omnes districciones capte per ballium [etc. *ut supra*] et quod ipse possit fugare et capere vulpes lepores et cuniculos in terris suis dominicis et eciam tenere duas laghedayas in manerio suo de Erhethe per annum et habere omnes presentationes [etc. *ut supra*] et quod omnes districciones capte [etc. *ut supra*] et eciam tenere duas laghedayas in manerio suo de Hatfield per annum et habere omnes presentationes [etc. *ut supra*] et eciam habere liberam Warennam in terris suis dominicis manerii sui de Tonge et quod omnes districciones [etc. *ut supra*] et tenere duas laghedayas in manerio suo de kyngestone iuxta Frenyngham per annum et habere omnes presentationes [etc. *ut supra*] et habere liberam Warrenam in omnibus dominicis terris suis manerii sui predicti et eciam liberam Warennam in omnibus dominicis terris suis in Ridelingwell Sibertone Kyngesdoun Chilhams Kyngestone Whitstaple Hatfield et Tonge etc.

Bartholomew appears by his attorney. His plea is:—quo ad predictas libertates in predictis maneriis de Chilhams Whitstaple Kyngestone Rideling-

Note from the Eyre Roll—*continued*.

well et Hatfield dicit quod maneria illa cum pertinenciis quondam fuerunt in seisina quorundam Alexandri de Baliolo et Isabelle uxoris sue ut de iure ipsius Isabelle et que postea per forisfacturam cuiusdam Iohannis quondam Comitis de Asceles filii et heredis eiusdem Isabelle ad dominum Regem nunc reuerti debuerunt tanquam escaeta etc. Idem dominus Rex nunc predicta maneria cum pertinenciis predicto Bartholomeo et cuidam Margarete uxori eius per cartam suam concessit tenenda eisdem Bartholomeo et Margarete et heredibus ipsius Bartholomei una cum hundredis feodis militum aduocationibus ecclesiarum libertatibus et liberis consuetudinibus et omnibus aliis ad predicta maneria spectantibus quoquo modo adeo plene et integre sicut predictus Alexander ea tenuit de ipso Rege et heredibus suis imperpetuum. Et dicit quod predicti Alexander et Isabella et antecessores ipsius Isabelle a tempore quo non extat memoria habuerunt predictas libertates in predicto breui contentas exceptis una feria et uno mercato in predicto manerio de Chilham que idem Alexander habuit ex concessione domini Edwardi Regis patris domini Regis nunc per cartam suam etc. Et que libertates in ultimo Itinere J. de Berewyk et sociorum suorum iusticiariorum Itinerancium in Comitatu isto eidem Alexandro fuerunt allocate etc. Et eo Waranto clamat libertates illas etc. saluo quod ipse modo tenet quasdam terras et tenementa de nouo per predictum Alexandrum perquisita et que non fuerunt de pertinenciis maneriorum predictorum in quibus ipse nullam Warennam clamat adpresens etc. Et quo ad libertatem essendi admirallus etc. Dicit quod dominus Rex nunc post predictum ultimum Iter J. de Berewyk fecit quandam Willelmum de Leyburne admirallum etc. per quod ipse adpresens nichil clamat de eadem libertate etc. quousque sibi constiterit de voluntate ipsius Regis etc. Dicit enim quod predicti Alexander et Isabella et antecessores ipsius Isabelle a tempore quo non exstat memoria ratione predictorum maneriorum habuerunt alias libertates quam in predicto breui Regis continentur scilicet theoloneum de mercandis ariuantibus apud la Greyston in predicto manerio de Whitstaple et quandam custumam percipiendi de singulis personis ariuantibus super terram suam in manerio de Rydelingwell duos denarios et amerciamenta tenenciorum suorum de Hatfeld ad que amerciata fuerunt in hundredo Regis de Chert et quandam feriam in vigilia et in die sancti Egidii in predicto manerio de Kyngestone et illis sine interrupcione usi fuerunt et petit se admitti modo ad clamandum etc. simul cum ceteris libertatibus in predicto breui contentis etc. Et quo ad predictas libertates quas ipse clamat habere in predictis maneriis de Erheth Tonge Kyngesdoune et Sibetone dicit quod ipse et omnes tenentes maneria illa a tempore quo non extat memoria libertates illas habuerunt et illis hucusque sine interrupcione usi sunt etc. Et eo Waranto clamat etc.

*Hartlepool's* replication on behalf of the King was:—quo ad hoc quod predictus Bartholomeus clamat quod omnes districciones capte per ballium domini Regis stabunt et morabuntur in parco suo apud Chilham per tres dies et tres noctes antequam abducantur et quod nulla districcio seu summonicio fiat in dicto hundredo per aliquem ballium sine bedello manerii



*Note from the Eyre Roll—continued.*

predicti nisi sit per defectum predicti bedelli etc. quod illud clameum est in preiudicium domini Regis et contra corone sue dignitatem maxime cum nullus debeat alicui balliuo seu ministro domini Regis in aliquo resistere nec in officio suo faciendo secundum legem et consuetudinem regni etc. contradicere. Et petit iudicium etc.

Et quo ad hoc quod clamat habere quandam libertatem in villa Cantuarie pertinentem ad manerium suum de Whitstaple quod omnes tenentes sui piscarii habebunt quandam placeam in regia strata inter ecclesiam omnium sanctorum et ecclesiam sancti Andree continentem in longitudine quater viginti pedes et in latitudine tres pedes ad pisces eorum vendendas absque tolneto alicui dando etc. dicit pro domino Rege quod clameum illud non est regale nec libertas etc. immo potius debet dici liberum tenementum etc. Et petit iudicium pro domino Rege etc. et quo ad omnes alias libertates etc. petit quod inquiratur pro domino Rege qualiter illis hucusque usus sit etc.

The King now intervenes and sends a letter to the Justices in the terms following. "Cum dudum per literas nostras patentes concessimus pro nobis et heredibus nostris dilecto et fideli nostro Bartholomeo de Badelsmere et Margarete uxori eius quod omnes terre et tenementa que Alexander de Baliolo tunc tenuit per legem Anglie de hereditate que fuit Isabelle quondam uxoris ipsius Alexandri et que occasione felonie quam Iohannes quondam Comes de Asceles filius et heres ipsius Isabelle pro qua suspensus fuit fecit post mortem ipsius Alexandri ad nos et heredes nostros tanquam escaeta nostra reuerti debuissent videlicet castrum et manerium de Chilham cum pertinenciis in comitatu predicto et maneria de Ridelingwelde Kyngestone Hatfeld et Whitstaple cum pertinenciis in eodem Comitatu et sexaginta et decem solidate et una quadrantata redditus cum pertinenciis in Douorria in eodem Comitatu et quadraginta librate redditus cum pertinenciis in Chyngeleford in comitatu Essex post decessum eiusdem Alexandri remanerent prefatis Bartholomeo et Margarete habende eisdem Bartholomeo et Margarete ad totam vitam utriusque eorundem cum hundredis feodis militum aduocationibus ecclesiarum libertatibus liberis consuetudinibus et omnibus aliis ad predicta castrum maneria et redditum spectantibus quoquo modo adeo plene et integre sicut predictus Alexander ea tenuit faciendo inde nobis et aliis dominis feodi illius seruicia inde debita et consueta. Ac postmodum per alias literas nostras patentes in escambium pro quibus terris et tenementis que predictus Bartholomeus per scriptum suum pro se et heredibus suis concessit nobis et heredibus nostris habendas post mortem predictorum Bartholomei et Margarete concessimus pro nobis et heredibus nostris quod predicta castrum maneria et redditus cum pertinenciis que dictus Alexander sic tenuit et que virtute concessionis nostre supradicte post decessum eiusdem Alexandri prefatis Bartholomeo et Margarete remanere deberent post obitum eorundem Bartholomei et Margarete remaneant heredibus ipsius Bartholomei habenda et tenenda una cum hundredis feodis militum aduocationibus ecclesiarum libertatibus libris consuetudinibus et omnibus aliis ad predicta Castrum maneria et redditum spectantibus quoquo modo adeo plene et integre sicut



Note from the Eyre Roll—*continued*.

predictus Alexander ea tenuit sicut superius dictum est prout in litteris nostris predictis plenius continetur ac ex parte dictorum Bartholomei et Margarete nobis sit ostensum quod licet ipsi predicta castrum maneria et redditum cum pertinenciis teneant sibi et heredibus ipsius Bartholomei ex rendicione predicti Alexandri Vos tamen asserentes eundem Alexandrum dum predicta castrum maneria et redditum cum pertinenciis tenuit libertates ad eadem pertinentes non potuisse per se in iudicium deduxisse eo quod predicta castrum maneria et redditum tenuit ad terminum vite sue per legem Anglie libertates predictas prefatis Bartholomeo et Margarete coram Vobis in Itinere vestro predicto allocare contradicitis propter quod nobis supplicarunt ut eis inde de remedio providere curaremus. Nos volentes supradicto negotio deliberacionem plenioram habere et ulterius fieri quod iustum

Quo Warranto ou il clame plusours franchises par grant et doun du Roi ou dit fust qil clame ceo qe le roi ne put mie avoir.

Sire Bartlemeu de Badlesmere<sup>1</sup> fust somouns a respondre al roi de play par qel garant il cleime avoir vewe de fraunk plege amendes<sup>2</sup> dassise<sup>3</sup> de payn et de cervoise enfreinte wreke de mer fraunk garenne en certaines maners feyre le jour seynt Michel et lendemayn chescun an feyre<sup>4</sup> et marchee par Lundy<sup>5</sup> par mi lan<sup>5</sup> en son manoir de B.<sup>6</sup> et davoit tutes les bestes prises en le hundred de B.<sup>6</sup> en noun de destresse pur verte eyre<sup>7</sup> ou pur autre chose qe touche le roi en son park par iij. jours et iij. nutz et davoit la fraunchise qe nul ministre le roi ne prist<sup>8</sup> nule<sup>9</sup> destresse deinz mesme le hundred saunz son bedel sil pout estre trove et davoit toun<sup>10</sup> en mesme le manoir de touz<sup>11</sup> arivantz<sup>12</sup> sur sa terre<sup>13</sup> saver pur checune teste ij. *d*.

*Malm.* sire B. vous dit qe les manoirs avaunt ditz furent en acun temps en la seisine un<sup>14</sup> Alexandre Baillol<sup>15</sup> qi les tynt<sup>16</sup> com del droit Isabelle sa femme par la ley Dengleterre et dit qe tutes les fraunchises avant ditz sauve la feire et le marchee furent apendantz as manoirs avant ditz de temps etc.<sup>17</sup> et dit qil et touz les terres tenauntz les avoient use de temps etc.<sup>17</sup> et dit qe le roi qi ore est<sup>18</sup> dona mesme les manoirs a B.<sup>19</sup> a tenir aussi fraunchement ove tutes les fraunchises usages et tutes<sup>20</sup> autres appendices com Alisandre les tynt et mist avant<sup>21</sup> chartre le roi<sup>22</sup> qe ceo tesmonia<sup>22</sup> et gaunt al feire et marchee il dit qe le roi Edward

<sup>1</sup> Badesmere *aa*; Baddusmere *β*; Batesmere *δ*; Batismere *η*. <sup>2</sup> amende-  
ment *β*. <sup>3</sup> *aa omits*. <sup>4</sup> *from δ; other texts omit*. <sup>5-5</sup> etc. *κ*. <sup>6</sup> W. *η*.  
<sup>7</sup> sire *β*; cyre *κ*. <sup>8</sup> freit *aa, β*. <sup>9</sup> *κ adds* maner de. <sup>10</sup> tolneu *aa*; *β*.  
tolun *β*; tonnen *δ*. <sup>11</sup> *aa adds* les. <sup>11-12</sup> les animals *β*. <sup>13</sup> *aa adds*  
cest a. <sup>14-15</sup> le besael *δ*. <sup>15</sup> de Bayllof *κ*. <sup>16</sup> *aa adds* ausi. <sup>17-17</sup> *δ, η, κ*  
*omit*. <sup>18</sup> *aa, β, κ add* pus. <sup>19</sup> mesme cesti Bartholomeu *aa, β*; meme cesti  
B. *η*; cesti Bartholomeu *κ*. <sup>20</sup> *aa, β add* les. <sup>21</sup> *aa, β add* la. <sup>22-22</sup> *from*  
*δ; γ has* etc.

Note from the Eyre Roll—*continued*.

fuerit in eodem Vobis mandamus quod omnia negocia dictos Bartholomeum et Margaretam super libertatibus ad predicta Castrum maneria et redditum spectantibus coram vobis in Itinere predicto tangentia usque in proximo parlamento nostro atterminetis et nos inde in eodem parlamento distincte et apte reddatis certiores ut super eisdem ulterius faciamus quod fuerit faciendum. Et interim contra dictos Bartholomeum et Margaretam super libertatibus predictis nullatenus procedatis. Et habeatis in eodem parlamento hoc breve."

And so the whole matter is remitted to the King in Parliament.

*Quo warranto* where several franchises were claimed as by grant and gift of the King, and it was objected that the claimant claimed more than the King could give.

Sir Bartholomew of Badlesmere was summoned by a writ of *quo warranto* to answer the King by what warrant he claims to have view of frankpledge, correction of breach of assize of bread and beer, wreck of the sea, free warren in certain manors, a fair upon St. Michael's Day and the morrow thereof in every year, a fair and market every Monday throughout the year in his manor of B., also to retain in his park for three days and three nights all beasts seized within the hundred of B. in the name of distress for vert, eyre or for any other matter appertaining to the King, and to have the franchise that no officer of the King shall levy any distress within the same hundred except in the presence of his (Sir Bartholomew's) beadle, if he can be found; and to levy a toll within the same hundred, to wit, of twopence a head upon all who disembark upon his land.

*Malmerthorpe*. Sir Bartholomew tells you that the manors afore-named were at one time in the seisin of a certain Alexander of Balliol who held them in the right of Isabel his wife by the law of England; and he says that all the aforesaid franchises, saving the fair and market, were appendant to the manors aforesaid from a time etc. and he says that he and all the tenants of the land enjoyed them from a time etc., and he says that the King that now is gave these same manors to [him] Bartholomew to hold as freely, with all the franchises, customs and all other appendants, as Alexander held them—and he tendered a charter of the King which testified to this—and as to the fair and market he says that King Edward, father of the King that now is, granted to the

piere le roi qe ore est graunta al avantdit Alisandre daver les <sup>1</sup>ut supra <sup>2</sup>par sa chartre la qele<sup>2</sup> il mist avant par vertue de qel graunt<sup>3</sup> Alisandre les usea et dit qe le roi lui avoit graunte qil ust tutes les fraunchises qe Alisandre avoit ut supra<sup>4</sup> et ensuiy<sup>5</sup> les clama il et<sup>6</sup> estre <sup>7</sup>cestes fraunchises<sup>7</sup> il clama davoir sok et sak et touz les amercementz et fyns<sup>8</sup> de touz ses fraunkstenantz<sup>9</sup> en la court lercevesq en B.

*Hertepol.* ceo navez mie clame avant.

*Malm.* donques nous les replivisoms <sup>10</sup>et clamoms<sup>10</sup> com apendant par prescripcioun ut supra.

*Hertepol* qaunt a celes qe vous clamez <sup>11</sup>com apendant<sup>11</sup> etc.<sup>12</sup> Jeo prie lenqeste pur le roi coment il ount este<sup>13</sup> use et qaunt a la fraunchise qil cleime davoir lenparkement de<sup>14</sup> destresse <sup>15</sup>ut supra par iij. jours etc. sire<sup>15</sup> ceo ne peut il nient clamer qar il serroit en oppressioun de poeple et a purprendre sur le roi et countre commun ley qar sire il cleime ceo qe le roi ne peut fere mesme qar qaunt le roi ad destresse <sup>16</sup>acun par<sup>16</sup> ses ministres <sup>17</sup>si celui qest destreint<sup>17</sup> voile seure pur sa destresse et fere ceo qe faire doit al roi le roi ne peut <sup>18</sup>plus longement<sup>18</sup> la destresse retenir saunz ley offendre par qey <sup>19</sup>ceo cleyrn nest pas receivable.<sup>20</sup>

*Pas.* amenda le cleyrn <sup>21</sup>et dit sire<sup>21</sup> nous clamoms <sup>22</sup>lenparkement des destresses ut supra par iij. jours et iij. nutz<sup>22</sup> si ceus qi sount destreint ne siwent lour destresse deinz les iij. jours <sup>23</sup>certeines sil les siwent avant<sup>24</sup> qil les <sup>25</sup>eient quites<sup>26</sup> qar lenparkement <sup>27</sup>ad este use al esement<sup>27</sup> de ceus del<sup>28</sup> hundred qe les<sup>29</sup> distresses ne feurent mie sodeynement chacez hors del hundred par ministre le roi <sup>30</sup>mes qil poent esement venir denz les iij. jours et siwre la destresse.<sup>30</sup>

<sup>31</sup>SPIGURNEL ore ditez vous bien qar qaunt le roi ad destresse et emparke la destresse le park est le seon pur le temps.

*Pas.* Sire cest verite.<sup>32</sup>

SPIGURNEL <sup>33</sup>cest emparkement<sup>33</sup> qe vous clamez est tut en esement de poeple par qey acune gent <sup>34</sup>vodront dire<sup>34</sup> qe ceo nest pas chose reale.

<sup>35</sup>*Pas.* Sire ceo serra a voz jugementz.<sup>36</sup>

*Hertepol* sires qaunt a ceo qil cleime qe le bailif le roi <sup>37</sup>ne <sup>38</sup>peut destreindre<sup>38</sup> pur rien qe touche le roi denz le hundred de B.<sup>39</sup> saunz

<sup>1-5</sup> etc. issi η. <sup>2-2</sup> κ omits. <sup>2-4</sup> δ omits. <sup>3</sup> garrant aa, β, κ. <sup>5</sup> issi κ.  
<sup>6</sup> aa, β omit. <sup>7-7</sup> ceo η; ceux κ. <sup>8</sup> seutes aa, β. <sup>9</sup> franchises β.  
<sup>10-10</sup> η omits. <sup>11-11</sup> δ, η omit. <sup>12</sup> aa, β omit. <sup>13</sup> κ omits. <sup>14</sup> et les  
aa, β, η. <sup>15-15</sup> κ omits. <sup>16-16</sup> par acun de δ, η. <sup>17-17</sup> sil η. <sup>18-18</sup> from δ.  
<sup>19-20</sup> tieu cleim ne put estre resceu de court δ; etc. η, κ. <sup>20</sup> soeffrable aa;  
semblable β. <sup>21-21</sup> issi κ. <sup>22-22</sup> ut supra η. <sup>23-24</sup> mes si eles suent  
avant aa, β; mes sil suent devant η. <sup>24</sup> κ adds la terme. <sup>25-25</sup> acquient  
etc. δ. <sup>26-32</sup> η omits. <sup>27-27</sup> est enement κ. <sup>28</sup> qi sount deynz κ. <sup>29</sup> lur  
aa, β, κ. <sup>30-30</sup> κ omits. <sup>31-32</sup> δ omits. <sup>33-33</sup> Le park η. <sup>34-34</sup> enten-  
dent η. <sup>35-36</sup> η omits. <sup>36</sup> avisementz aa. <sup>37-39</sup> face nule dis-  
tresse η. <sup>38-38</sup> fra nule distresse aa, β, κ; fera nul distresse δ.



aforesaid Alexander to have them *as above* by his charter—which charter he tendered—by virtue of which charter he enjoyed them, and he says that the King granted to him that he should have all the franchises which Alexander had *as above*, and by that warrant he claimed them ; and, in addition to these franchises, he claimed to have soc and sake and all the amercements and fines taken from all his free tenants in the Court of the Archbishop in B.

*Hartlepool.* These you have not claimed before.

*Malmerthorpe.* Then we replevy them and claim them as appendant by prescription *as above*.

*Hartlepool.* In respect of those which you claim as appendant etc. I pray an inquest on behalf of the King as to how they have been used ; and in respect of the franchise which he claims to have of imparking distress *as above* for three days etc., that, Sir, he cannot claim, for it would be in oppression of the people and a trespass upon the King and against the common law ; for, Sir, he is claiming a right to do that which the King himself cannot do ; for when, by one of his officers, the King has levied distress upon any one, such an one that has been so distrained may sue for his distress and perform such duty as he owes to the King, and the King can no longer retain the distress without infringing the law ; therefore this claim is not receivable.

*Passeley* amended the claim and said :—Sir, we claim impoundment of distress for three days and three nights certain if they that be distrained do not bring suit for their distress within the three days. If they bring suit before then, let them have their distress delivered to them. Such impounding has been practised for the advantage of them that be of the hundred that the distress might not be straightway driven out of the hundred by the King's officer, and that the owner thereof might be assured of an opportunity of coming within the three days and replevying his distress.

SPIGURNEL J. Now you say well, for when the King has taken distress and has impounded it, the pound is his for the time.

*Passeley.* Sir, that is true.

SPIGURNEL J. This right to impound which you are claiming is entirely to the advantage of the people, and so there be those who say that it is not an [exclusively] royal appurtenance.

*Passeley.* Sir, that will be matter for your judgment.

*Hartlepool.* Sirs, in respect of his claim that the King's bailiff shall not distrain for aught that touches the King within the hundred of B. except in the presence of his [Sir Bartholomew's] beadle, if it be

son bedel sil pout estre trove<sup>1</sup> Sire ceo ne peut il <sup>2</sup>en nul manere<sup>2</sup> clamer qar<sup>3</sup> ceo serroit a restreindre<sup>4</sup> le power le roi en sa terre demene qe ne peut<sup>5</sup> estre fet <sup>6</sup>par nule resoun<sup>6</sup> qar le roi mesme <sup>7</sup>par son graunt<sup>8</sup> ne peut restreindre son real power.<sup>9</sup>

HERVI volez plus dire pur le roi.

*Hertepol* <sup>10</sup>nenil mes<sup>11</sup> en ceste chose demoroms<sup>12</sup> en voz agardz.

E aussi sire B. fust somouns <sup>13</sup>a respondre<sup>13</sup> a roi par qel garant il cleyma davoir <sup>14</sup>une<sup>15</sup> fraunchise videlicet<sup>16</sup> une place en la ville<sup>17</sup> de Canterbirs et<sup>18</sup> certain lieu qe ses pessoners del manoir de B.<sup>19</sup> peusent estre et vendre lour pessoun quites de tonu<sup>20</sup> et content la place en longueur xl. pees et en laeur iij. pees <sup>21</sup>par mi etc.<sup>21</sup>

*Pas.* nous le clamons de temps ut supra et par mesme la resoun ut supra de aliis.

*Hertepol.* Sires Caunterbirs<sup>22</sup> est la ville le roi et il clame de avoir stallage en le soil le roi mes ceo ne peut il nient aver <sup>23</sup>par usage mes soulement<sup>24</sup> par especialte<sup>25</sup> de roi etc.<sup>26</sup>

HERVI ceo cleym soune plus proprement en fraunktenement qil ne fet en<sup>27</sup> fraunchise reale<sup>28</sup> qar <sup>29</sup>nous entendoms qe<sup>29</sup> si vous devez <sup>30</sup>de droit<sup>30</sup> aver<sup>31</sup> le<sup>32</sup> stallage si homme vous ostant vous averiez<sup>33</sup> lassise mes destre quite de tonu est cleym<sup>34</sup> real.

*Hertepol* le manoir de B. a qel il dit ceste fraunchise estre apendant est en la mayn Alisandre le<sup>35</sup> Baylol. Jugement si a ly qi nad rien en le manoir <sup>36</sup>appende <sup>37</sup>cest clamer.<sup>38</sup>

*Westcote* Alisandre nad rien en le manoir si noun a la volente Barthelmeu<sup>39</sup> de jour en jour ou<sup>40</sup> dan en an.<sup>41</sup>

HERVI agardez voz <sup>42</sup>jugementz<sup>43</sup> a noz procheines venues.<sup>44</sup>

<sup>1</sup> *η* adds en le hundred de W. <sup>1-3</sup> *η* omits. <sup>2-2</sup> from δ. <sup>4</sup> arester aa.  
<sup>5</sup> *η* adds par nule lei. <sup>6-6</sup> en nule manere aa; *η* omits. <sup>7</sup> From this point to end *η* reads: ne poet pas anentir son real pouer et sur ceo demourt en jugement.  
<sup>7-8</sup> δ omits. <sup>8</sup> power κ. <sup>9</sup> aa, β, κ add purquei etc. <sup>10-11</sup> κ omits.  
<sup>11-12</sup> de cestes choses demurray aa, β. <sup>13-13</sup> from δ; etc. γ. <sup>14-16</sup> δ omits.  
<sup>15</sup> aa, β add franc. <sup>17</sup> cite κ. <sup>18</sup> en aa, β, κ; en un δ. <sup>19</sup> aa adds et H; β adds H. <sup>20</sup> tolhu aa, β; tounere δ. <sup>21-21</sup> δ, κ omit; etc. aa, β.  
<sup>22</sup> B. δ. <sup>23-26</sup> saunz especial graunt du roi κ. <sup>24</sup> sil deive avoir ceo covenant qe ceo soit aa; sil deueit cete avoir ceo covent qe se seit β; sil le deive aver ceo covent qil eyt δ. <sup>25</sup> especial grant aa, β. <sup>27</sup> aa, β add franc.  
<sup>28</sup> aa, β omit. <sup>29-29</sup> κ omits. <sup>30-30</sup> δ, κ omit. <sup>31</sup> aa, β add de droit.  
<sup>32</sup> droit κ. <sup>33</sup> userez κ. <sup>34</sup> chose aa, β, δ; franchise κ. <sup>35</sup> de κ.  
<sup>36-38</sup> pusse com apendant clamer aa, β. <sup>37-38</sup> ceo clamer κ. <sup>39</sup> aa and β add de B. <sup>40-41</sup> κ omits. <sup>40</sup> et δ. <sup>42-44</sup> iours etc. κ. <sup>43</sup> iours δ.

that he can be found, in no way, Sir, can he make such claim, for it would be in restraint of the King's power in his demesne land, which no reason can make possible, for even the King himself cannot by his own grant do aught in restraint of the royal power.

STAUNTON J. Do you wish to say more on behalf of the King?

*Hartlepool.* No; in respect of this matter we abide your judgment.

And Sir Bartholomew was also summoned to answer the King by what warrant he claimed to have a franchise, namely, an open space in a certain position in the city of Canterbury, being forty feet in length and three feet in width, where the fishmongers of his manor of B. might be and sell their fish free of all toll by right of etc.

*Passeley.* We claim it from a time etc. *as above* and by the same right as we claim the other franchises *as above*.

*Hartlepool.* Sirs, Canterbury is the King's city, and he is claiming stallage in the King's soil; but that he cannot have by custom, but only by charter from the King etc.

STAUNTON J. This claim savours rather of freehold than of royal franchise, for it seems to us that if you have a right to stallage and should be ousted therefrom you would have your remedy by assize; but to be free of toll is a royal franchise.<sup>1</sup>

*Hartlepool.* The manor of B. to which he says that this franchise is appendant, is in the hand of Alexander of Balliol. Judgment whether to him that has naught in the manor this franchise appends.

*Westcote.* Alexander has naught in the manor except from day to day or year to year at the will of Bartholomew.

STAUNTON J. Await your judgments at our next coming.<sup>2</sup>

<sup>1</sup> Cf. Bracton, lib. ii. cap. 24, f. 56.

<sup>2</sup> See *Introduction*, p. xxxiv.



REX v. LENHAM.<sup>1</sup>

## Note from the Eyre Roll.

Dominus Rex per *Galfridum de Hertepol* qui sequitur pro eo optulit se versus Iohannem de Lenham de placito quo Waranto clamat habere liberam Warennam in omnibus dominicis terris suis de Lenham Huntyngdone Leueshoth et Lamberherst et unum mercatum singulis Septimanis per diem Martis apud manerium suum de Huntyngdone et unam feriam ibidem singulis annis

Quo warranto ou il fist defaute par quoi la fraunchise fust pris en la main le roi.

Jon de Lenham<sup>2</sup> fust sommons <sup>3</sup>a respondre<sup>3</sup> a roi<sup>4</sup> par quel garant <sup>5</sup>il cleime davoit <sup>6</sup>fraunche garenne<sup>7</sup> en ses demenes terres en son manoir de B. et marche<sup>8</sup> par jour de Mardy<sup>8</sup> checune symaine etc. Jon fit defaute par qey

*Hertepol* pria pur le roi qe la fraunchise fust pris en la mayn le roi.

Et meyntenaut avoit le viscounte precept de prendre les en la meyn le roi et <sup>9</sup>a respondre<sup>10</sup> al roi<sup>11</sup> des issues et qil ust<sup>12</sup> un homme <sup>13</sup>al marche<sup>14</sup> pur<sup>15</sup> le roi de <sup>16</sup>quiler<sup>17</sup> tonu et<sup>18</sup> autres<sup>19</sup> empruementz <sup>20</sup>du marche<sup>20</sup> etc.

HERVI ore siwe Jon gaunt il vodra qar sil ne replevice<sup>21</sup> celes franchises<sup>22</sup> denz cest eyre il les perd<sup>23</sup> pur touz jours.

REX v. LEYBURN.<sup>24</sup>

## Note from the Eyre Roll.

Henricus de Leyburne summonitus fuit ad respondendum domino Regi quo Waranto clamat habere mercatum in manerio suo de Woteryngbery Singulis Septimanis per diem Martis et unam feriam ibidem singulis annis per duos dies duraturam et liberam Warennam in omnibus dominicis terris suis maneriorum suorum de Woteryngbery Chert Sharsted Lydesyngg et Waldeslade.

Henry's plea was:—quod dominus Rex nunc per cartam suam concessit ipsi Henrico quod ipse et heredes sui imperpetuum habeant libertates predictas in uillis predictis.

Et profert quandam cartam sub nomine ipsius domini Regis que testatur quod idem dominus Rex concessit eidem Henrico quod ipse et heredes sui imperpetuum Habeant unum mercatum singulis Septimanis per diem Martis

<sup>1</sup> Reported by aa, β, γ, δ and κ. Text from γ collated with the others. Head note from aa and (with very slight variations) β. <sup>2</sup> Hengham aa. <sup>3-3</sup> from δ; etc. γ. <sup>4</sup> aa adds de play; β adds du play. <sup>5-7</sup> δ omits. <sup>6-8</sup> marche en son manoir de B. le iour de Mekerdy κ. <sup>9-10</sup> qil respondit κ. <sup>9-11</sup> qil responde aa, β. <sup>12</sup> eit aa, β. <sup>13-14</sup> aa omits. <sup>14-17</sup> de coiller le δ. <sup>15</sup> de part aa, β. <sup>16-18</sup> coiller tolnu et aa; quiller tolour et β; coyller δ. <sup>19</sup> aa, β add choses des. <sup>20-20</sup> from δ. <sup>21</sup> replevisse aa, β. <sup>21-22</sup> from aa, β, δ; etc. γ; sa franchise κ. <sup>23</sup> perdra aa, β. <sup>24</sup> Reported by aa, β, γ, δ, η, θ and κ.

THE KING *v.* LENHAM.

*Note from the Eyre Roll—continued.*

per quinque dies duraturam videlicet in vigilia et in die Assumpcionis beate Marie et per tres dies sequentes. Et ipse non venit. Et summonitus etc. Iudicium predictae libertates capiantur in manum domini Regis etc. Postea venit predictus Iohannes et replegiauit libertatem suam et placitavit etc.<sup>1</sup>

*Quo warranto* where the respondent made default and the franchise was thereupon taken into the King's hand.

John of Lenham was summoned to answer to the King by what warrant he claims to have free warren in his demesne lands in his manor of B. and market on the Tuesday in every week etc. John made default, whereupon

*Hartlepool*, on behalf of the King, prayed that the franchise might be taken into the King's hand.

Thereupon was the Sheriff straightway commanded to seize the franchise into the King's hand, and to answer to the King for the issues, and to have a man at the market to collect the tolls and other profits of the market on behalf of the King.

STAUNTON J. Now let John sue as soon as he likes, for if he replevy not these franchises within this Eyre he will lose them for ever.

THE KING *v.* LEYBURN.

*Note from the Eyre Roll—continued.*

apud manerium suum de Woteryngbery in Comitatu isto et unam feriam ibidem singulis annis per tres dies duraturam uidelicet in uigilia et in die et in Crastino Natiuitatis sancti Iohannis Baptiste Nisi mercatum illud et feria illa sint ad nocumentum etc. et quod habeant liberam Warennam in omnibus dominicis terris suis manerii predicti et de Sharstede Walderslade Lydesynge Chert et Pekham in eodem Comitatu dum tamen terre ille non sint infra metas foreste Regis etc. Ita quod nullus intret terras illas ad fugandum in eis vel ad aliquid capiendum quod ad Warennam pertineat sine licentia et uoluntate ipsius Henrici vel heredum suorum supra forisfacturam Regi decem librarum unde dicit quod ipse clamat habere libertatas predictas in carta predicta contentas pro se et heredibus suis secundum tenorem carte predictae etc.

*Hartlepool's* replication for the King was:—quod predicta maneria in quibus predictus Henricus clamat habere libertates predictas pro se et heredibus suis sunt Ius cuiusdam Elizabethe uxoris ipsius Henrici Et quod idem Henricus nichil habet in eisdem nisi ut uir ipsius Elizabethe que non nominatur in carta predicta unde petit iudicium.

The judgment was:—quia dominus Rex nunc concessit predicto Henrico predictas libertates per cartam suam quam modo profert etc. idem Henricus inde sine die saluo iure Regis etc.

<sup>1</sup> m. 129.

I.<sup>1</sup>

Quo waranto ou il clame franchise par chartre le Roi ou dit fust qil navoit rien en le manoir si noun com baron une tiele etc.

Quo  
Waranto.

Sire<sup>2</sup> Henry de Leybourne fust somons a respondre a roi de play par qel garant il clama fraunche<sup>3</sup> garenne en ses demenes terres en ces manoirs de <sup>4</sup>C.<sup>5</sup> B. S.<sup>6</sup> et marche checun jour de Lundy par mi tut<sup>7</sup> lan en le manoir de C.<sup>5</sup> et feire le jour de Seynt Jon <sup>8</sup>le Baptist<sup>8</sup> et la veile.<sup>9</sup>

*Stonore* nous chalengoms<sup>10</sup> fraunche<sup>11</sup> garenne en noz demenes terres <sup>12</sup>en noz manoirs C.<sup>5</sup> B. S. et F. <sup>13</sup>et<sup>14</sup> par ceste chartre<sup>15</sup> et mist avant la chartre le roi <sup>16</sup>qe ceo tesmoigne.<sup>16</sup>

*Hertepol* sire il nad chalenge<sup>17</sup> garenne fors qen iij. manoirs videlicet C.<sup>5</sup> B. et S. par qey jeo prie <sup>18</sup>pur le roi<sup>18</sup> qe la garenne<sup>19</sup> en droit<sup>20</sup> del manoir de F.<sup>21</sup> soit pris en la meyn le roi.

<sup>22</sup>HERVI nous la tenoms en la meyn le roi par qey il la peut meyn-tenant replevir<sup>23</sup> sil veut et pleder ove le roi.<sup>24</sup>

*Stonore* Sire nous la prioms a plevyne.

HERVI<sup>25</sup> volunters<sup>26</sup> mes vous dorez au roi.<sup>27</sup>

Et nota qil fera fyn <sup>28</sup>pur la plevyne<sup>29</sup> hoc est<sup>30</sup> amercement au roi.<sup>31</sup>

*Hertepol* ore vous lavez replevi ditez<sup>32</sup> par qel garant vous clamez garenne en le manoir de F.

*Stonore*<sup>33</sup> par mesme ceste chartre etc. et fuit allocatum non obstante qil ne la avoit mie clamee <sup>34</sup>ut supra et<sup>34</sup> qaunt a marche par<sup>35</sup> jour de Lundy en la manoir de C.<sup>36</sup> et feire etc. nous chalengoms<sup>37</sup> feire le jour de Seynt Jon Baptiste<sup>38</sup> etc. et la veille<sup>39</sup> et lendemayn <sup>40</sup>et par ceste chartre<sup>40</sup> et mist avant la chartre le roi.

*Hertepol* vous navez chalenge <sup>41</sup>feire mes<sup>41</sup> le jour Seynt Jon Baptiste<sup>42</sup> et la veile<sup>43</sup> etc.

*Stonore* donques la prioms nous a plevyne <sup>44</sup>et habuit et peus dit qil clama lendemeyn la feire etc.<sup>45</sup> par mesme la chartre<sup>46</sup> et fust receu.

*Hertepol*. Jeo enteng<sup>47</sup> qe sire Henry<sup>48</sup> ne peut en les manoirs avant

<sup>1</sup> Text of (I) from  $\gamma$  collated with aa,  $\beta$ ,  $\delta$ ,  $\kappa$ . Head note from aa and  $\beta$ .  
<sup>2</sup> aa,  $\beta$  omit. <sup>3</sup>  $\kappa$  omits. <sup>4-6</sup> B et S. aa,  $\beta$ . <sup>5</sup> G,  $\kappa$ . <sup>7</sup> added from  $\delta$ .  
<sup>8</sup> aa omits. <sup>8-9</sup> chescun an en la vile avandit  $\kappa$ . <sup>10</sup> clamons aa,  $\beta$ ,  $\kappa$ .  
<sup>11</sup>  $\kappa$  omits. <sup>12-14</sup>  $\delta$  omits. <sup>13-15</sup>  $\kappa$  omits. <sup>16-16</sup>  $\delta$  omits. <sup>17</sup> clama  
aa; clema  $\beta$ . <sup>18-18</sup> aa omits. <sup>19</sup> franchise aa,  $\delta$ . <sup>19-20</sup> added from  $\delta$ .  
<sup>21</sup> S.  $\delta$ . <sup>22-24</sup>  $\kappa$  omits. <sup>23</sup> clamer  $\beta$ ; chalenger  $\delta$ . <sup>24</sup> aa,  $\beta$  add et  
nota qil fra fin pour la plevine al Roi; hoc est amerciamentum al Roi. <sup>25-27</sup> mes  
devers al roy  $\kappa$ . <sup>26</sup> aa,  $\beta$  omit. <sup>27-31</sup> aa,  $\beta$  omit. <sup>28-30</sup> viz.  $\delta$ .  
<sup>29-31</sup>  $\kappa$  omits. <sup>32</sup>  $\kappa$  adds ceo qe vous volez. <sup>33</sup>  $\delta$  omits. <sup>34-34</sup> al com-  
encement del eyre  $\kappa$ . <sup>35</sup> le aa,  $\beta$ ,  $\kappa$ . <sup>36</sup>  $\kappa$  has C. here and not G. as before.  
<sup>37</sup> clamons a,  $\beta$ . <sup>38</sup> from  $\delta$ ; etc.  $\gamma$ . <sup>39-39</sup>  $\kappa$  omits. <sup>40-40</sup>  $\kappa$  omits.  
<sup>41-41</sup> fors en  $\delta$ . <sup>42</sup> from  $\delta$ . <sup>43-43</sup>  $\kappa$  omits. <sup>44-45</sup> eyt etc. par HERVY.  
*Stonore* nous clamons lendemeyn de Saint Johan  $\delta$ . <sup>45-46</sup>  $\beta$  omits. <sup>47</sup> entente  
aa; entenke  $\beta$ . <sup>48</sup> Jon  $\kappa$ .



## I.

*Quo warranto*, where it was alleged against one who claimed a franchise by virtue of the King's charter that he had naught in the manor save in his wife's right.

Sir Henry of Leyburn was summoned to answer the King by what warrant he claimed to have free warren within his demesne lands in his manor of C., B. and S. and a market on every Monday throughout the year in his manor of C., and also a fair upon St. John the Baptist's Day and the Eve thereof.

*Quo warranto.*

*Stonore.* We claim free warren within the demesne lands in our manors of C., B., S. and F. and by this charter—and he made *profert* of the King's charter in testimony.

*Hartlepool.* Sir, he has claimed warren in but three manors, to wit C., B. and S. Wherefore I pray on behalf of the King that warren in right of the manor of F. be taken into the King's hand.

STAUNTON J. We hold it in the King's hand; wherefore he may now straightway replevy it if he will, and plead with the King.

*Stonore.* Sir, we pray to replevy it.

STAUNTON J. Willingly, but you will give [a fine] to the King.

And note that he shall make fine, that is, shall pay an amercement to the King, for the replevin.

*Hartlepool.* Now that you have replevied it tell us by what warrant you claim warren in the manor of F.

*Stonore.* By this same charter etc.—and it was allowed notwithstanding that he had not claimed *as above*—and in respect of the market on Mondays and the fair etc. in the manor of C., we claim a fair upon St. John the Baptist's Day and upon the Eve and the Morrow thereof, and by this charter—and he tendered the King's charter.

*Hartlepool.* You did claim a fair upon St. John the Baptist's Day and the Eve thereof only.

*Stonore.* Then we pray to replevy—and he was allowed to do so—and then he said that he claimed the fair etc. on the morrow and by the same charter; and he was received [to do so].

*Hartlepool.* I submit that Sir Henry cannot claim franchise in the

ditz fraunchise clamer qar il nad rien en les manoirs si noun com baron la dame et le <sup>1</sup>graunt de<sup>1</sup> fraunchise chiet en perpetuite et chose qe chiet en perpetuite il ne peut en autrui<sup>2</sup> droit clamer <sup>3</sup>par quei etc.<sup>3</sup>

HERVI nest il somons a respondre <sup>4</sup>a roi<sup>4</sup> par qel garaunt <sup>5</sup>il cleime les franchises<sup>5</sup> et il vous ad respondu qey fera il plus mes si <sup>6</sup>Henri<sup>7</sup> fust a dieu comaunde<sup>8</sup> et le roi porte<sup>9</sup> son quo waranto vers la dame ceste chartre lui vaudroit poi mes sil eient issue il peut estre eide par ceste chartre.

*Hertepol* Jeo demorray en voz agards <sup>10</sup>sil peuse<sup>11</sup> en autre droit les franchises clamer<sup>12</sup> etc. ut supra.

<sup>13</sup>HERVI ceo serra en noz jugementz etc.<sup>13</sup>

## II.<sup>14</sup>

Le Roie porta son Quo Waranto vers Sire<sup>15</sup> Henri de Leyborne a moustre par quel garant il clama<sup>16</sup> dauer Marche en son manere de Watrigburie<sup>17</sup> par ior de Marde etc. et un feyr a durer pur ij. iors chescun An<sup>18</sup> etc. et frank garrene en ses<sup>19</sup> demesnes terres Watrigburie.

*Stonor.* Sire Henri cleyme March pur ior de Marde etc. et feire a durer pur 3 [*sic*] iors la veile de seint Johan et le ior et lendemein et garrene a Watrigburie et a Pecham par Chartre <sup>20</sup>nostre Seignur le Roie gore est etc.<sup>21</sup>

Et mist auant la Chartre a la cort qe temoigna<sup>22</sup> qe les chos susdit furent grantez a sire Henri et a ses heires.

*Htep.* par la Chartre <sup>23</sup>qil met auant il<sup>24</sup> cleyme dauer feir iij. iours etc. et garrene en ses<sup>25</sup> maneres de Watrigburie et Pecham al comencement de Eyre il <sup>26</sup>cleyme forsque<sup>27</sup> dauer feire ij. iours etc. et garrene a Watrigburie seulement sanz plus qant a terce ior et la garenne de Pecham dont il ne mist pas son cleime <sup>28</sup>a comencement de Eyre<sup>29</sup> iugement pur le Roy.

*Stant.* de ceo dont<sup>30</sup> il mist pas son cleime etc. soit pris en la maine le Roie.

*Stonor.* nous le prioms a pleuir.<sup>31</sup>

Et ceo li fust grante saue le dreit le Roie sauer qil freit fin <sup>32</sup>au Roie pur son noncleime<sup>33</sup> et pus pleider et clamer par la chartre come defendu.

<sup>1-1</sup>  $\delta$  omits.      <sup>2</sup>  $\delta$  adds noun.      <sup>3-3</sup> from  $\delta$ .      <sup>4-4</sup> aa,  $\beta$  omit.  
<sup>5-5</sup> from  $\delta$ ; etc.  $\gamma$ .      <sup>6-8</sup> Henri fut mort  $\kappa$ .      <sup>7</sup> from the other texts.  $\gamma$  has  
homme.      <sup>9</sup> portast  $\kappa$ .      <sup>10-12</sup>  $\kappa$  omits.      <sup>11</sup> purra aa,  $\beta$ .      <sup>13-13</sup>  $\kappa$  omits.  
<sup>14</sup> Text of (II) from  $\theta$  collated with  $\eta$ .      <sup>15</sup>  $\eta$  omits Sire.      <sup>16</sup> from  $\eta$ ;  $\theta$  has  
clana.      <sup>17</sup> Waterburne  $\eta$ .      <sup>18</sup>  $\eta$  omits.      <sup>19</sup> ceus  $\eta$ .      <sup>20-21</sup> le Roi qe  
maintenant est  $\eta$ .      <sup>22</sup> testifia  $\eta$ .      <sup>23-24</sup> le Roy a  $\eta$ .      <sup>25</sup> ceus  $\eta$ .      <sup>26-27</sup> ne  
clama  $\eta$ .      <sup>28-29</sup> etc.  $\eta$ .      <sup>30</sup> qe  $\eta$ .      <sup>31</sup> plevine  $\eta$ .      <sup>32-33</sup>  $\eta$  omits.

aforenamed manors, for he has naught in the manors save as the husband of the lady [thereof], and a grant of a franchise lies in perpetuity and that which lies in perpetuity cannot be claimed in right of another. Wherefore etc.

STAUNTON J. Is he not summoned to answer the King by what warrant he claims the franchises? He has answered you. What more can he do? But if Henry were called to God and the King brought his *quo warranto* against the lady this charter would be of little good to her; but if they had an heir he might be aided by this charter.

Hartlepool. I will abide your judgment whether he can claim these franchises etc. *as above* in the right of another.

STAUNTON J. We will give judgment etc.<sup>1</sup>

## II.

The King brought his *quo warranto* against Sir Henry of Leyburn [calling upon him] to show by what warrant he claimed to have a market every Monday and a fair every year extending over two days in his manor of Wateringbury and free warren within his demesne lands in Wateringbury.

Stonore. Sir Henry claims a market on Mondays etc. and a fair lasting three days, that is to say upon the Eve and the Day and the Morrow of St. John, and warren in Wateringbury and Peckham by charter from our lord the King that now is.

And he tendered to the Court the charter testifying that the franchises aforesaid were granted to Sir Henry and his heirs.

Hartlepool. By the charter which he tenders he claims to have a fair of three days and warren in his manors of Wateringbury and Peckham. At the commencement of the Eyre he claimed a fair of two days only and warren in Wateringbury only, and naught more. In respect of the third day [of the fair] and warren in Peckham, which he did not claim at the commencement of the Eyre, [I ask] judgment for the King.

STAUNTON J. Let that which he did not claim etc. be taken into the King's hand.

Stonore. We pray to replevy it.

And this was allowed to him, saving the right of the King; that is to say he must make fine with the King for his failure to claim, and may then plead and claim by the charter in answer [to the writ].

<sup>1</sup> The note from the Eyre Roll (p. 174 *supra*) records judgment in Henry's favour.



<sup>1</sup>*Htep.* Henri nad riens in le manere de Watrigburie sinon come le droit sa feme et par sa Chartre qil met auant piert qil ad les chos susdit in le manere a li et a ses heires et nentendoms mie qil prise par la Chartre qil met auant en qi le cort le Roie fut desiue et cele franchise en autre droit cleyme.

*Srig.* Henri cleyma soule al comencement del Eyre hors de quel cleyme cest bref est siwe vers li soule et la Chartre qil met auant proue son cleyme estre bone peut estre qe le heire Henri serra inherite in mesme le manere come heire la feme et issi la franchise garranti par la Chartre in le sank Henri Mes si la dame survive Henri et cleyme ceo qe Henri cleyme ore son cleim ne purra mie estre garranti par la Chartre mais autre est ore qar Henri est en vie et est en possession du manere etc.

Et sic ad iudicium.

### REX v. SAY.<sup>2</sup>

#### Note from the Eyre Roll.

Galfridus de Say summonitus fuit ad respondendum domino Regi de placito quo Waranto clamat habere liberam Warennam in omnibus dominicis terris suis de Berlyngg Burgham Cudeham et Westgrenewych.

Geoffrey's plea was:—quod Westgrenewych est una et eadem villa et dicit quod ipse et omnes antecessores sui a tempore quo memoria non existit semper hucusque usi sunt libera Warennam sua in omnibus dominicis terris suis in villis predictis et eo Waranto clamat habere liberam Warennam predictam in omnibus dominicis terris suis in villis predictis Et dicit quod ipse nullam aliam clamat habere libertatem etc. Dicit eciam quod quidam Willelmus de Say pater ipsius Galfridi cuius heres ipse est alias in Curia domini Edwardi Regis patris domini Regis nunc coram Iohanne de Berewyk

### I.<sup>3</sup>

Quo warranto ou il clama par chartre le Roi Henri partie de franchises et partie par prescripcion.

Geffray de Say fust somons a respondre al roi de play par qel garant il clama fraunche<sup>4</sup> garenne en son manoir de B. et feire tiel jour etc.

<sup>1</sup> From this point to the end of the case *η* reads:

*Ht.* H. nad niens en le maner de H. [*sic*] sinon com de dreit sa femme pur quei en altri dreit ne purra il cele franchise etc.

*Srig.* la chartre il met auant est a ly soul et proue cleim estre bon et put estre qe le heir Henri serra enherite et issint serra la franchise garanti par la chartre en le sank Henri mes si la feme survive Henri son cleim ne purra pas estre garanti par la chartre mes altre est Henri est en vie et en possession etc.

Et sic ad iudicium etc.

<sup>2</sup> Reported by *aa*, *β*, *γ*, *δ*, *η*, *θ* and *κ*.  
*aa*, *β*, *δ*, *κ*: Head note from *aa* and *β*.

<sup>3</sup> Text of (I) from *γ* collated with

<sup>4</sup> *κ* omits.

*Hartlepool.* Henry has naught in the manor of Wateringbury save in right of his wife, but by the charter which he tenders it would appear that the above named franchises in the manors were granted to him and to his heirs, and we do not understand how he can take by the charter which he tenders, which is in deceit of the King's Court and claims this franchise by other right.

SPIGURNEL J. Henry claimed in his sole right at the commencement of the Eyre. Consequent upon that claim this writ is brought against him alone, and the charter which he tenders proves his claim to be good. It may be that Henry's heir will, as the wife's heir, inherit this same manor, and consequently the franchise warranted by this charter will be in Henry's descendants. But if the lady survive Henry and she claim that which Henry is now claiming her claim will not be warranted by the charter. But that is not to the present point, for Henry is alive and is in possession of the manor etc.

And so to judgment.

### THE KING *v.* SAY.

#### Note from the Eyre Roll—*continued.*

et sociis suis Iusticiariis ultimo Itinerantibus in comitatu isto clamavit ipse habere liberam Warennam predictam ut illam qua idem Willelmus et omnes antecessores sui a tempore quo non extitit memoria usi fuerunt continue etc. Et dicit quod per quandam Iuratam coram eodem Iohanne de Berewyk et sociis suis Iusticiariis etc. tunc in Itinere illo summonitam et captam compertum fuit quod idem Willelmus de Say pater etc. et omnes antecessores sui a tempore quo non extitit memoria continue usi fuerunt Warennam illa Ita quod tunc consideratum fuit etc. quod predictus Willelmus pater etc. iret inde sine die etc. salvo Iure Regis etc. Et de hoc ponit se super Recordum rotulorum predicti Iohannis de Itinere illo etc.

The Roll was found to confirm Geoffrey's statement. The judgment was :—quod predictus Galfridus inde sine die salvo Iure Regis etc.<sup>1</sup>

#### I.

*Quo warranto* where the respondent claimed part of the franchises by charter of King Henry and part by prescription.

Geoffrey of Say was summoned by a writ of *quo warranto* to answer the King [by what warrant] he claimed free warren in his manor of B. Quo  
warranto.

<sup>1</sup> m. 130.

marchee <sup>1</sup>par jour de Jeudy<sup>2</sup> checune simaigne<sup>3</sup> lete<sup>4</sup> pillory trebuchet fourches etc.

*Ing.* sire <sup>5</sup>il cleime davoit fraunche garenne<sup>5</sup> par la chartre le roi Henri ael <sup>6</sup>le roi<sup>6</sup> etc. qe si est et la mist avant chartre qe graunta <sup>7</sup>la garenne<sup>7</sup> al ael<sup>8</sup>cesti Geffray et dit qe le manoir descendi linialment <sup>5</sup>ove gareine taunt qe<sup>5</sup> a cesti Geffray et ensuit<sup>9</sup> la cleime etc. et qaunt a les autres fraunchises lui et ses auncestres ount use<sup>10</sup> de temps dount il ni ad memorie.

*Hertepol* pur le roi nous prioms qe vous voilez enquerir sil eit use la garenne et les autres fraunchises <sup>11</sup>sanz interupcion.<sup>11</sup>

*HERVI* <sup>12</sup>volunters qar<sup>13</sup> cest reson et<sup>14</sup> aussi bien serra enquis sil les eit use <sup>15</sup>auxi bien<sup>16</sup> avaunt la procheine eyre com peus<sup>17</sup> et hoc nota.<sup>18</sup>

*Hertepol* Sire il ne mistrent<sup>19</sup> pas lour cleym a la procheine eyre.

*Ingg.* nous ne poeoms<sup>20</sup> qar nous fumes<sup>21</sup> donques denz age et en la garde lercevesqe.<sup>22</sup>

Et ceo lui fust alowe.

## II.<sup>23</sup>

Geffray de Say fut somons a moustrer par qel garant il clama de auer vewe de frank plege amendes de pain etc. forches et garenne a son Maner de Wilton.

*Ingh.* qant a la garenne mist auant la chartre le Roy Henri etc. fet a un son auncestre etc. et qant a la vewe et les altres choses susdites nous et nos auncestres seisi de tens dount <sup>24</sup>ne ad<sup>25</sup> memoire sanz interupcion.

• STAUNT. qi pleda cete franchise en le derreyn Eyre.

*Ingh.* en le derrayn Eyre Geffray fut denz age en la garde le Roy par reson de Ercheuesche de Cauntebirs en sa mein esteant pur quei tot ne fut adonques cleim mis en la franchise<sup>26</sup> ceo ne deit a ore greuer.

*Ht.* nous voloms auer lenqeste pur le Roy sil eient vse lour franchises et ceo dit il auxi avant de franchises clames par chartres com par pre-scripcion etc.

<sup>1-2</sup> chescun Lundy κ.    <sup>2</sup> Lundi aa β, δ.    <sup>2-3</sup> κ omits.    <sup>4</sup> last δ.  
<sup>5-6</sup> κ omits.    <sup>6-6</sup> from δ.    <sup>7-7</sup> δ omits.    <sup>8</sup> aa, β add mesme.    <sup>9</sup> issint  
aa, β; issi κ.    <sup>10</sup> eeu aa; eu β.    <sup>11-11</sup> from δ.    <sup>12-14</sup> κ omits.  
<sup>13</sup> aa adds par.    <sup>14</sup> aa omits.    <sup>15-16</sup> from δ.    <sup>17</sup> apres aa.    <sup>17-18</sup> δ, κ  
omit.    <sup>19</sup> mostrent aa; mustrent β; moustrent δ and κ.    <sup>20</sup> poimus aa;  
purrumus β.    <sup>21</sup> aa, β add a.    <sup>22</sup> leuesqe κ.    <sup>23</sup> Text of (II) from η collated  
with θ.    <sup>24-26</sup> yniad θ.    <sup>26</sup> θ adds plede.



and a fair upon such a day etc., a market on the Thursday in every week, court-leet, pillory, tumbrel, gallows etc.

*Ingham.* Sir, he claims to have free warren by the charter of King Henry, grandfather of the King that now is, which is here—and he tendered the charter which granted warren to the grandfather of this Geoffrey, and said that the manor together with [the right to] warren descended lineally to this Geoffrey, and by that warrant he claimed it etc.; and, as to the other franchises, he and his ancestors have enjoyed them from a time to the contrary of which there is no memory.

*Hartlepool.* On behalf of the King we pray that you will take inquest as to whether he has used warren and the other franchises without interruption.

STAUNTON J. Willingly, for it is in reason; and inquest will also be taken as to whether he has used them as well before the last Eyre as subsequently. <sup>1</sup>*And note this.*<sup>2</sup>

*Hartlepool.* Sir, they did not make their claim at the last Eyre.

*Ingham.* We could not, for we were then under age and in the wardship of the Archbishop.

And this was allowed to him.

## II.

Geoffrey of Say was summoned to show by what warrant he claimed to have view of frankpledge, fines of bread etc., gallows and warren in his manor of Wilton.

*Ingham*, in respect of warren, tendered the charter of King Henry etc. granted to Geoffrey's ancestor etc.; and in respect of view and the other matters aforementioned [said]:—We and our ancestors have been seised of them uninterruptedly from time immemorial.

STAUNTON J. Who claimed this franchise in the last Eyre?

*Ingham.* At the time of the last Eyre Geoffrey was under age and in the wardship of the King by reason of the Archbishopric of Canterbury being in the King's hand. Consequently, though the franchises were not then claimed, that omission ought not to prejudice him now.

*Hartlepool.* We ask for an inquest on behalf of the King as to whether they have used their franchises:—and he asked this as well in respect of the franchises claimed by charter as of those claimed by prescription etc.

<sup>1-2</sup> This is probably an interpolation by the scribe.

LE ROI v. BREWOSA.<sup>1</sup>

## Note from the Eyre Roll.

Willelmus de Brewosa summonitus fuit ad respondendum domino Regi de placito quo Waranto clamat habere emendas assise panis et ceruisie fracte in manerio suo de Wicham cum omnibus libertatibus ad easdem pertinentibus etc.

William's plea by his attorney was :—quod ipse et omnes alii predictum manerium tenentes a tempore quo non extat memoria predictam libertatem habuerunt et ea continue usi sunt etc. Et eo Waranto clamat ipse libertatem illam etc.

Quo waranto ou il clame franchise par prescripcion de temps. Dit fust pour le Roy qil ne pout car il fust purchaseur.

Quo  
waranto.

Sire<sup>2</sup> Willem de Brewouse<sup>3</sup> fust somons <sup>4</sup>a respondre al roi de<sup>5</sup> play<sup>6</sup> par qel garant il clama <sup>7</sup>davoir <sup>8</sup>la fraunchise damendes<sup>9</sup> de payn et de cervoise enfreint<sup>10</sup> de ses tenants demene en son manoir de Wicham.<sup>11</sup>

*Pas.* Sire <sup>12</sup>nous vous dioms qe sire<sup>12</sup> Willem et ses auncestres et touz <sup>13</sup>les seignurs<sup>13</sup> qount tenuz mesme le manoir ount<sup>14</sup> use cele fraunchise<sup>15</sup> de temps etc.<sup>16</sup> par reson de manoir com apendant a mesme le manoir.

*Hertepol.* vous estes purchasor <sup>17</sup>par qey vous ne poez prescripcioun<sup>18</sup> alegger.<sup>19</sup>

<sup>20</sup>*Pas.* nous clamoms la fraunchise com apendant al manoir <sup>21</sup>et seisi sumes del manoir par qey etc.<sup>21</sup> mes la verite est qe nostre piere

<sup>1</sup> Reported by aa, β, γ, δ, η, θ and κ. Text from γ collated with the others. Head note from aa and β. aa has a further marginal note: Franchise grante par le Roi serra esteint par alienacion. <sup>2</sup> aa, κ omit. <sup>3</sup> Brouse aa; Bruse β; Brews η; Brewes θ. <sup>4-6</sup> η omits. <sup>5</sup> au aa, β. <sup>7-9</sup> etc. δ. <sup>8-11</sup> vewe de francplegge η; vewe de franc plegge en son manere de Bolton δ. <sup>9</sup> aa, β, κ add de assise. <sup>10</sup> added from δ. <sup>11</sup> Wikham aa, β. <sup>12-12</sup> added from δ. <sup>13-13</sup> θ and κ omit. <sup>14</sup> κ adds eu et. <sup>14-15</sup> seisi η. <sup>16</sup> dount il nad memore β, θ. <sup>17-18</sup> de meme le maner et nentemdoms point qe vous puisset par prescripcion en estrange sank clamer η; θ is similar. <sup>18</sup> δ omits; κ adds du tens. <sup>20</sup> From this point to the end of the report η and θ, with some slight variations, read:

*Srig.* Vewe de franc plegge et autres franchises forpris Wrek de mer qe unt este use de antiquite apurtenans al Manere purchasors pount clamer par prescripcion ou vocher lour feffour a garrantir sil voient pur ceo qe franchise apurtinent git en estente.

*Ht.* vous meme estes purchasour qi ne poet estre de tele condicion com si vostre auncestre vst purchase et deuie seisi et vous dioms qe vostre pere vous enfeffa de mesme le manere et issi estes purchasor.

*STAUNTON.* tot purchasa il de son pere qi heir il est et il est enz il purra clamer si voile come priue ou com estrange et si com estrange vocher li mesme come heire son pere etc. et ne mie pur ce avant lestatut qe le Roy Edward pere etc. fit de quo waranto lan de son regne xvij. nule franchise fut alowe par prescripcion etc. Et stetit verificacio ly et ceus auncestres qe tindrent le maner seisi de antiquite com apurtenans etc.

<sup>21-21</sup> dount nous sumes seisi κ.

## THE KING v. WICKHAM BREAUx.

Note from the Eyre Roll—*continued*.

*Hartlepool*, for the King, asks that it be found by a jury 'qualiter usi sint libertate predicta.' The jurors of the hundreds of Downhampford, Preston and Eastry find 'quod predictus Willelmus et omnes alii tenentes predictum manerium semper hucusque a tempore quo non extat memoria habuerunt in predicto manerio emendas assise panis et ceruisie fracte et tumbrellum set non pillorium.'

And so, saving the King's rights, William goes his way *sine die*.<sup>1</sup>

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*Quo warranto* where the respondent claims franchise by immemorial prescription, and it was said on behalf of the King that he could not so claim, as he was a purchaser.

Sir William of Wickam BreauX was summoned by a writ of *quo warranto* to answer the King by what warrant he claimed to have the franchise of correction of his demesne tenants for breach of assise of bread and beer in his manor of Wickham. Quo warranto.

*Passeley*. Sir, we tell you that Sir William and his ancestors and all the lords that have held this same manor have enjoyed this franchise from a time etc. in right of their manor as appendant to the same manor.

*Hartlepool*. You are a purchaser ; consequently you cannot allege prescription.

*Passeley*. We claim the franchise as appendant to the manor, and we are seised of the manor ; wherefore etc. But it is true that our

<sup>1</sup> m. 142 d.



purchacea le manoir et nous sumes entre<sup>1</sup> par successioun<sup>2</sup> deritage par qey il covent qe nous alleggeoms prescripcioun qar la fraunchise passe ove le manoir com apendant mes<sup>3</sup> si nous la usoms clame par especial fet de roi par le alienacioun celui a qi le grant se fist la fraunchise ust este esteint.

SPIGURNEL. il cleime ceste fraunchise par resoun del manoir com apendant al manoir de temps et il dit qe son piere purchacea etc. <sup>4</sup>par quei jeo<sup>4</sup> dy qen ceo cas il purra voucher etc. qar ceste fraunchise chiet en estente del manoir et sil eust fraunchise de vewe de fraunkplege il poit vocher mes <sup>5</sup>jeo ne dy mie<sup>5</sup> de wrek de mier qil poit vocher.

*Hertepol.* Sire<sup>6</sup> poit homme vocher<sup>7</sup> de garenne.

SPIGURNEL. <sup>8</sup>jeo ne vous respond nient.<sup>9</sup>

*Malm.* aussi bien poit il vocher de la fraunche garenne com de les autres qar aussi bien peut ele estre apendant par prescripcioun etc. com poent les autres et passer com apendant etc.

*Hertepol.* si cesti Willem ust purchase le manoir a qi etc. de son piere il poit vocher lui mesmes en ceo cas com heir son piere et peus<sup>10</sup> outre.<sup>11</sup>

SPIGURNEL *Pass. Westcote.* oyl il peut elire <sup>12</sup>aussi bien en ceo cas de fraunchise<sup>12</sup> le qel <sup>13</sup>il voile<sup>13</sup> clamer com heir<sup>14</sup> ou com purchasour pur ses avantages<sup>15</sup> la ou il est eyns apres la mort son piere<sup>16</sup> com il purra en<sup>17</sup> terres ou en tenementz.

*Westcote*<sup>18</sup> il gereit plus proprement <sup>19</sup>en la bouche Sire Willem<sup>19</sup> en ceo cas de voucher qe de alegger prescripcioun.<sup>20</sup>

*Cant.* par aventure il nad nul vocher.

*Hertepol.* <sup>21</sup>del houre<sup>22</sup> qe son piere fust purchasour del manoir peus le temps le roi Richard qest temps de memorie jugement sil gise en sa bouche dalegger prescripcion <sup>23</sup>ut supra.<sup>23</sup>

*Pass.* en lour agards soit qar statut nous eide del quo waranto etc.

<sup>24</sup>et sic pendet.<sup>24</sup>

<sup>1</sup> β omits; eynz κ.      <sup>2</sup> descente aa, β, δ.      <sup>3</sup> et aa, β.      <sup>4-4</sup> from δ; γ  
has ideo.      <sup>5-5</sup> ceo ne li die aa, β; ceo de ly die jeo pur δ.      <sup>6</sup> Si aa, β;  
auxint δ.      <sup>7</sup> added from aa, β and κ; γ omits.      <sup>8</sup> κ adds a ceo.      <sup>8-9</sup> A  
ceo ne vous responde jeo mie, aa, β, δ.      <sup>10</sup> plus aa, β.      <sup>11</sup> κ adds pur quei  
de pus qyl poet voucher il ne poet prescripcion alegger.      <sup>12-12</sup> κ omits.  
<sup>13-13</sup> κ omits.      <sup>14</sup> κ adds par prescripcion.      <sup>15</sup> κ adds auxi bien en ceo cas.  
<sup>16</sup> auncestre κ.      <sup>17</sup> des κ.      <sup>18</sup> Hertilp. κ.      <sup>19-19</sup> κ omits.      <sup>20</sup> κ adds  
du tens.      <sup>21</sup> aa, β, δ add Jeo demoroy en vos agardes.      <sup>21-22</sup> Jeo demouray  
en vos agardes κ.      <sup>23-23</sup> aa, β, κ, omit.      <sup>24-24</sup> Et pendet adhuc aa, β; κ omits.

father purchased the manor, and we have entered by succession to inheritance, and so we rightly plead prescription, for the franchise passes with the manor as appendant thereto. If, on the other hand, we had claimed it by grant from the King, the franchise would have been extinguished upon alienation by him to whom the grant was made.

SPIGURNEL J. He claims this franchise by right of his manor as appendant to the manor from time [immemorial] and he says that his father purchased etc., and consequently I say that in these circumstances he can vouch etc.; for this franchise is coincident in extent with the manor; and if he had the franchise of view of frankpledge he could vouch. But I do not say that he could vouch in respect of wreck of the sea.

*Hartlepool.* Sir, may a man vouch in respect of warren?

SPIGURNEL J. I say nothing as to that.

*Malmerthorpe.*<sup>1</sup> He may as well vouch in respect of free warren as in respect of the others, for it may as well be appendant by prescription etc. and pass as appendant etc. as may the others.

*Hartlepool.* If this William had purchased the manor to which [this franchise is appendant] from his father, he could, in these circumstances, have vouched himself as his father's heir and then [vouched] over.

SPIGURNEL J., *Passeley, Westcote.* Yes, it is equally open to him in these circumstances to elect whether he will claim the franchise as heir or as purchaser, as shall be most to his advantage, since after his father's death he is in [either as heir] of the lands or [as purchaser] of the tenements.

*Westcote.* In the circumstances it would more properly lie in Sir William's mouth to vouch rather than to allege prescription.

*Cambridge.* It may be that he has no voucher.

*Hartlepool.* Since his father was purchaser of the manor subsequently to the time of King Richard, from whose time memory runs, judgment whether it lies in his mouth to allege prescription *as above*.

*Passeley.* Let it abide the judgment of the Court, for the statute *de quo warranto* is favourable to us.

And so the matter stands over.

<sup>1</sup> *Malmerthorpe* seems to be speaking as *amicus curiæ*.

LE ROI *v.* SHIRELOND.<sup>1</sup>

## Note from the Eyre Roll.

Robertus de Shirelond summonitus fuit ad respondendum domino Regi de placito quo Waranto clamat habere wreccum maris in manerio suo de Shirelond et emendas assise panis et ceruisie fracte in maneriis suis de Shirelond et Ostone de omnibus tenentibus suis amerciatis in hundredo de Middel-tone et liberam Warennam in omnibus dominicis terris suis de Shirelond Ostone et Donnyngbery.

Robert's plea was :—quo ad predictam Warennam dicit quod dominus Edwardus Rex pater domini Regis nunc pro sibi et heredibus suis carta sua concessit ipsi Roberto quod ipse et heredes sui imperpetuum habeant liberam warennam in omnibus dominicis terris suis de Shirlond Ostone et Dunnyngbery in Comitatu isto dum tamen terre ille non sunt infra metas foreste Regis Ita quod nullus intret terras illas ad fugandum in eis vel ad aliquid capiendum quod ad Warennam pertineat sine licencia et voluntate ipsius Roberti vel heredum suorum supra forisfacturam Regis decem librarum etc. Et profert inde cartam ipsius domini Regis patris etc. que hoc testatur cuius datum est apud Becheuille nono die septembris anno regni sui vicesimo

Quo warranto ou il clame les franchises per grant du Roi etc.

Quo  
waranto.

Robert de Schirlond<sup>2</sup> fust somons <sup>3</sup>a respondre al roi de plai <sup>4</sup>par qel garant<sup>5</sup> il clama davoit fraunche garenne en ses demenes terres en ses manoirs de B. et C.<sup>6</sup>

*Pas.* Sire il cleime la fraunchise par grant de roi en ses terres en le maner de B. par ceste chartre etc. mes en le manoir de C. ne cleime nule garenne<sup>7</sup> car<sup>8</sup> peus le grant le roi nous enfeffames<sup>9</sup> un Richard <sup>10</sup>de mesme le manoir<sup>10</sup> en fee et reprismes estat par quei la fraunchise fust esteint par le<sup>11</sup> feffement.

HERVI. si enci soit vous nel poez james aver<sup>12</sup> saunz novel grant<sup>13</sup> de roi.

*Pas.* sire pur ceo nel chalengoms point.

Et sic nota qant homme ad fraunchise par fet de roi ele ne passe mie par feffement <sup>14</sup>secus est si la fraunchise seit appendante al chose aliene<sup>15</sup> etc.<sup>16</sup> et la fraunchise fust<sup>17</sup> mie alowe etc.

<sup>1</sup> Reported by aa, β, γ, δ and κ. Text from γ collated with the others. Head note from aa and β. <sup>2</sup> Schyrland δ; Cherlond κ. <sup>3-4</sup> from δ; etc. γ. <sup>4-5</sup> δ omits. <sup>6</sup> T. aa. <sup>7</sup> franchise, aa, β, δ, κ. <sup>8</sup> from the other texts; γ omits. <sup>9</sup> from aa, β, δ; enfeffa γ, κ. <sup>10-10</sup> δ omits. <sup>11</sup> cele aa, β. <sup>12</sup> reauer δ; clamer κ. <sup>13</sup> title aa, β, δ; κ ends here. <sup>14-15</sup> added from δ. <sup>16</sup> δ ends here. <sup>17</sup> ne fust, aa and β.



THE KING *v.* SHIRLAND.

Note from the Eyre Roll—*continued.*

nono et eo Waranto clamat ipse habere liberam Warennam predictam etc. Et quo ad alias libertates dicit quod ipse clamat habere Wreccum maris in Shirlonde et emendas assise panis et ceruisie in Shirlonde et Ostone faciendo inde domino Regi per annum viginti et quatuor solidatas. Et dicit quod ipse et omnes antecessores sui a tempore quo non extat memoria habuerunt libertates predictas Ita quod quum transgressores assise predictae amerciati sunt in hundredo Regis pro predicta assisa fracta perceperunt ipsi amerciamenta etc. et eo Waranto clamat ipse libertates predictas etc. Et dicit quod alias in Curia domini Edwardi Regis patris domini Regis nunc coram Iohanne de Berewyk et sociis suis Iusticiariis etc. Itinerantibus in ultimo Itinere proximo precedenti clamavit ipse libertates predictas etc. Et dicit quod libertates predictae tunc coram eodem Iohanne de Berewyk et sociis suis in Itinere illo ei allocate fuerunt etc. Et de hoc ponit se super Recordum Rotulorum predicti Iohannis de Itinere illo.

The Roll was inspected, and confirmed Robert's allegations.

The Court thereupon gives judgment that Robert may go away *sine die*, *saluo iure Regis* etc.<sup>1</sup>

*Quo warranto* where the respondent claims the franchises by grant of the King etc.

Robert of Shirland was summoned by a writ of *quo warranto* to answer the King by what warrant he claimed to have free warren within the demesne lands of his manors of B. and C.

*Quo warranto.*

*Passeley.* Sir, he claims to have this franchise within the [demesne] lands of his manor of B. by grant from the King by this charter etc.; but in the manor of C. he does not claim warren, for subsequently to the grant by the King we enfeoffed one Richard of the same manor in fee and [afterwards] reacquired our estate therein, so that the franchise was extinguished by the feoffment.

STAUNTON J. If so it be, you cannot ever have it again without a fresh grant from the King.

*Passeley.* It is for that reason, Sir, that we do not claim it.

And so you shall note that when a man hath a franchise by grant from the King it passes not by feoffment. Otherwise is it if the franchise be appendant to what is alienated etc. And the franchise was not allowed etc.

<sup>1</sup> m. 129 d.

LE ROI v. ANON.<sup>1</sup>

Quo waranto ou il clame franchise a lui et a ses heirs rendant tant al eschequer paran ou dit ly fut qe il ust chose de tesmoner qil avoit paie sicom tayle et fet del eschecquer.

<sup>2</sup>Thomas <sup>3</sup>deB.<sup>4</sup> fust somons etc. <sup>5</sup>a respondre al roi de plai par queu garrant<sup>5</sup> il clama daver <sup>6</sup>la franchise de vewe<sup>6</sup> de fraunkplege en C.

*Pas.* Sire nous la clamoms<sup>7</sup> a nous et a noz heirs rendant al eschekere etc. demy marc par an et autre especialte navoms nous.

SPIGURNEL. Jeo enteng<sup>8</sup> cele soute<sup>9</sup> aussi bone<sup>10</sup> especialte pur vous come chartre le roi.

*Hertepol.*<sup>11</sup> mes sil ne paye bien <sup>12</sup>cele soute<sup>13</sup> la franchise serroit<sup>14</sup> pernable etc.

SPIGURNEL. oil.

HERVI. avez taille del Eschequer ou autre chose par qey nous pooms estre asserte qe vostre dit soit verrey.

*Pas.*<sup>15</sup> nenil.

HERVI portez nous bref del Eschequer ou autre chose par qey nous pooms estre asserte etc. entre ci et Lundi etc.

<sup>16</sup>Hoc nota.<sup>16</sup>

NOTA.<sup>17</sup>

*Nota* par HERVI qe la fraunchise damendes de payn et de cervoise <sup>18</sup>est dependant<sup>19</sup> de vewe de Frankplege et <sup>20</sup>similiter<sup>20</sup> qe cely qad amendes dassises<sup>21</sup> de payn et de servoise<sup>22</sup> il<sup>23</sup> ad pillori et tombrel<sup>24</sup> et <sup>25</sup>dictum fuit<sup>26</sup> qe<sup>27</sup> qaunt le roi graunte tiele franchise si homme ne use pillori <sup>28</sup>et tombrel<sup>28</sup> et les autres adminicles<sup>29</sup> il peut perdre la fraunchise et sil ne les use a de primes qant le graunt est fet il ne les peut pas lever apres.

<sup>1</sup> Reported by aa, β, γ, δ, κ. Text from γ collated with the others. Head note from aa; β has the same with slight variations. <sup>2</sup> aa and β insert un. <sup>3-4</sup> κ omits.  
<sup>4</sup> W. δ. <sup>5-5</sup> from aa, β, δ; etc. γ; κ omits. <sup>6-6</sup> aa, β omit. <sup>7</sup> chalen-  
goms a tenir δ. <sup>8</sup> tienk aa; tenkge β. <sup>8-9</sup> δ omits. <sup>10</sup> bien κ.  
<sup>11</sup> Hervy aa. <sup>12-13</sup> a cele foitz δ. <sup>13</sup> sewte β. <sup>14</sup> est κ. <sup>15</sup> Her-  
tepol δ; aa, β add Sires. <sup>16-16</sup> aa, δ, κ omit. <sup>17</sup> Note from aa, β, γ, δ. Text  
from γ collated with the others. <sup>18-22</sup> aa omits. <sup>19</sup> appendant δ; apen-  
dant κ. <sup>20-20</sup> qil ensweit β; qil ensseut δ; qil ensuyt κ. <sup>21</sup> δ omits.  
<sup>23</sup> aa adds lui. <sup>24</sup> turnberell aa; turmelle β. <sup>25-27</sup> κ omits. <sup>25-26</sup> dit  
aa, β. <sup>28-28</sup> from aa, β, δ. <sup>29</sup> adunkges β.

THE KING *v.* ANON.

*Quo warranto* where the respondent claims a franchise to himself and his heirs upon an annual payment to the Exchequer ; where he was told that he must have some evidence, such as a tally or voucher from the Exchequer, that he had paid.

Thomas of B. was summoned by a writ of *quo warranto* to answer the King by what warrant he claimed to have the franchise of a view of frankpledge in C.

*Passeley.* Sir, we claim it as granted to ourselves and our heirs upon our paying half a mark yearly to the Exchequer etc., and other specialty have we none.

SPIGURNEL J. I think that such a service is as good a specialty for you as the King's charter would be.

*Hartlepool.* But if he does not render his service fully the franchise will be seizable etc.

SPIGURNEL J. Yes.

STAUNTON J. Have you any tally from the Exchequer or aught else by which we may be certified that what you say is true ?

*Passeley.* No.

STAUNTON J. Between now and Monday bring us a letter from the Exchequer or other thing by which we may be certified etc.

*Note this.*

## NOTE.

It was noted by STAUNTON J., that the franchise of correction [of infraction of assizes] of bread and beer is dependent upon view of frankpledge ; and that similarly he that hath correction of the assizes of bread and beer hath also pillory and tumbrel. And it was said that if, when the King grants such a franchise, the grantee use not pillory and tumbrel and the other corollary franchises he may lose his franchise, and that if he use them not from the first making of the grant he cannot afterwards revive them.



NOTA.<sup>1</sup>

Nota qe homme peut clamer hundred real<sup>2</sup> com un gros par pre-  
scripcioun mes il ne <sup>3</sup>pase mie par alienacioun<sup>3</sup> nient plus qe <sup>4</sup>ne fet<sup>4</sup>  
fraunchise graunte par chartre qar le prescripcioun est sa especiaute.<sup>5</sup>

LE ROI v. LE PRIOR DE DOVER.<sup>6</sup>

## Note from the Eyre Roll.

Prior sancti Martini de Duorria summonitus fuit ad respondendum  
Domino Regi de placito quo Waranto clamat habere visum franci plegii  
emendas assise panis et ceruisie fracte et Wreccum maris in manerio suo de  
Dale et visum franci plegii emendas assise panis et ceruisie fracte pillorium  
et Tumberellum Theolonium et Wreccum maris in villa sancte Margarete etc.

The Prior's plea, by his attorney, was:—quo ad predictas libertates in  
predicta villa de Dale dicit quod ipse et predecessores sui a tempore quo  
non extat memoria habuerunt easdem libertates et illis hucusque sine  
interrupcione usi sunt et eo Waranto clamat libertates illas etc. Et quo ad  
predictas libertates in predicta villa sancte Margarete dicit quod libertates  
ille allocate fuerunt in ultimo Itinere I. de Berewyk et sociorum suorum  
itinerancium hic etc.

Quo waranto ou le Prior clama aver usee du temps etc. ou dit fut  
gil ne les clama point en le prochein eyr.

Le prior de Dover fust somouns <sup>7</sup>a respondre al roi de plai par queu  
garrant<sup>8</sup> il clama daver <sup>9</sup>les fraunchises de<sup>10</sup> vewe de frankplege amendes  
dassise de payn et de servoise<sup>11</sup> Wrek de mier et tonu<sup>12</sup> videlicet daver<sup>13</sup>  
de cheeun homme ij.d.<sup>14</sup> qe arivasent en la ville<sup>15</sup> seynte Margarete.

*Pas.* sire nous et noz predecessours les avoms use de<sup>16</sup> temps<sup>17</sup> etc.

*Hertepol.* vous ne les clamastes en la dreyn eyre.

*Pas.* sire jeo enteng qe vous les troverez chalenge.<sup>18</sup>

*Hertepol.* vochez record.

*Pass.* noun fray.<sup>19</sup>

HERVI <sup>20</sup>regarda les roules de la procheine<sup>20</sup> eyre et trova qe mesme  
celi prior clama <sup>21</sup>a la procheine eyre<sup>21</sup> touz les fraunchises avauntiditz  
mes qant il vynt <sup>22</sup>en court<sup>22</sup> et pleda ove le roi donques clama il vewe

<sup>1</sup> Note from aa, β, γ, δ, κ. Text from γ collated with the others. <sup>2</sup> aa, β omit. <sup>3-3</sup> put pas aliener aa. <sup>4-4</sup> aa omits. <sup>5</sup> especialite aa, β.  
<sup>6</sup> Reported by aa, β, γ, δ and κ. Text from γ collated with the others. Head note from β. <sup>7-8</sup> from δ. <sup>9-10</sup> aa, β, δ, κ omit. <sup>11</sup> aa, β, κ add enfreynt.  
<sup>12</sup> tolnu aa, β. <sup>12-13</sup> cest a saver aa, β. <sup>14</sup> deners aa. <sup>15</sup> aa, β add de.  
<sup>16</sup> du aa. <sup>17</sup> β adds avant. <sup>18</sup> clame aa, β; chartres δ. <sup>19</sup> ferray aa.  
<sup>20-20</sup> comaund regarder le dareyn κ. <sup>21-21</sup> κ omits. <sup>22-22</sup> δ omits.

## NOTE.

Note that a man may claim royal hundred as a gross by prescription, but it does not pass upon alienation any more than does a franchise granted by charter, for prescription is its warrant.

THE KING *v.* THE PRIOR OF DOVER.Note from the Eyre Roll—*continued.*

The rolls of the previous Eyre are examined, and it is found that the Prior did in fact claim at the previous Eyre view of frankpledge, fines for breach of assise of bread and wine, pillory and tumbrel, which franchises his predecessors had enjoyed from time immemorial. But it appeared that no claim had been made to the other franchises which the Prior was now claiming, namely, wreck of the sea, and the right of taking a toll of twopence from everyone disembarking within his manor of Deal. So, as to these, to judgment. Afterwards the Prior pays twenty shillings that he may have an inquiry by a jury; and the jurors of the hundreds of Bewsbrough and Cornilo found ‘quod predictus Prior et predecessores sui a tempore quo non extat memoria hucusque habuerunt omnes predictas libertates sicut ipsi clamant etc. et illis hucusque sine interrupcione usi sunt.’

So the Prior now goes his way *sine die salvo iure Regis etc.*<sup>1</sup>

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*Quo warranto* where the Prior claimed to have enjoyed from time immemorial, and it was said that he had not claimed at the previous Eyre.

The Prior of Dover was summoned by a writ of *quo warranto* to answer the King by what warrant he claimed to have the franchises of view of frankpledge, correction of assizes of bread and beer, wreck of the sea, and toll, that is to say, to take twopence from every person disembarking within the vill of St. Margaret.

*Passeley.* Sir, we and our predecessors have enjoyed them from time immemorial.

*Hartlepool.* You did not claim them at the last Eyre.

*Passeley.* Sir, I think that you will find that they were claimed.

*Hartlepool.* Vouch the record.

*Passeley.* I will not.

STAUNTON J. inspected the rolls of the previous Eyre and found that this same Prior had claimed all the aforesaid franchises at the previous Eyre, but that when he came into Court and answered the

<sup>1</sup> m. 131.

de Frankplege amendes dassise <sup>1</sup>de payn et de cervoys<sup>2</sup> et Wrek<sup>3</sup> etc. taunt soulement et fust entre en roulle—Prior clamat istas libertates tantum.

HERVI. nous trovoms<sup>4</sup> entre en roulle qe mesme cesti prior a la generale somons<sup>5</sup> mist son cley<sup>6</sup>m de touz les fraunchises avant nomes<sup>7</sup> et qant il <sup>8</sup>fust somons a respondre al<sup>8</sup> roi etc.<sup>9</sup> il clama<sup>10</sup> soulement <sup>11</sup>les iiij.<sup>11</sup> par qey qant a tonu<sup>12</sup> soiez a jugement.

*Westcote.* <sup>13</sup>lesglise<sup>14</sup> est denz age.<sup>15</sup>

HERVI cesti prior<sup>16</sup> ne la peut james aver qar il mesme desclama. Pas. le tantum fust malement entre.

*Hertepol.* sire jeo prie pur le roi qe vous voilez enquerir <sup>17</sup>com bien<sup>17</sup> le tonu amunta peus le drein eyre et qe le roi soit de ceo respondu.

<sup>18</sup>HERVI cest resoun.<sup>18</sup>

<sup>19</sup>Iudicium pendet<sup>19</sup> ad alium diem

*Pass.*<sup>20</sup> Sire ceo qe nous clamoms nest mie tonu<sup>21</sup> qar nous ne avoms marche ne feire mes<sup>22</sup> est<sup>23</sup> une custume qe les arivantz paient <sup>24</sup>ut supra<sup>25</sup> com pur trespas et<sup>26</sup> defoul<sup>27</sup> fet sur nostre terre par le arivail et ceo ne peut nient estre dit chose reale par qey tut seoms nous foriugge de tonu<sup>28</sup> nous ne sumes mie foriugge de ceste costume.

SPIGURNEL. <sup>29</sup>ceo qe est en certain taxe<sup>30</sup> ne peut mie estre aiuge<sup>31</sup> pur trespas einz <sup>32</sup>plus tost pur<sup>33</sup> chose reale mes vous le demandez en certain par qey etc.

### LE ROI v. LE PRIOR DE LEDES.<sup>34</sup>

#### Note from the Eyre Roll.

According to the Eyre Roll it was only the Prior's right to free warren that was challenged. Nothing is recorded as to the other franchises mentioned in our text.

Prior de Ledes summonitus fuit ad respondendum Domino Regi de placito quo Waranto clamat habere liberam Warennam in omnibus dominicis Terris suis in Comitatu isto etc.

The Prior's answer was :—quod dominus Edwardus Rex pater domini Regis nunc per cartam suam concessit et confirmavit cuidam Priori de Ledes

<sup>1-2</sup> from δ; etc. γ.      <sup>2-3</sup> δ omits.      <sup>4</sup> aa, β add issint.      <sup>4-5</sup> qil κ.  
<sup>6</sup> κ adds auaunt nomez.      <sup>6-7</sup> κ omits.      <sup>8-9</sup> pleda od le κ.      <sup>9</sup> par qel  
garaunt aa, β.      <sup>9-10</sup> dunkes taunt κ.      <sup>10</sup> aa, β add tant.      <sup>11-11</sup> ut  
supra aa, β; etc. κ.      <sup>12</sup> tolnu aa, β, δ.      <sup>13-15</sup> lur eglise est tutsoyrs deinz  
age κ.      <sup>14</sup> Sainte eglise aa; Lour eglise β.      <sup>16</sup> δ omits.      <sup>17-17</sup> ceo  
qe aa, β.      <sup>18-18</sup> aa omits.      <sup>19-19</sup> κ omits.      <sup>20</sup> κ omits.      <sup>21</sup> tolnu  
aa, β; tolune κ.      <sup>22</sup> einz aa, β.      <sup>23</sup> κ omits.      <sup>24-25</sup> added from δ.  
<sup>26</sup> from aa and β; γ has a; κ omits.      <sup>27</sup> de felonie δ.      <sup>28</sup> tolnu aa, β;  
tolune κ.      <sup>29-30</sup> chose qest toutz iours taxe en certeine aa, β, δ; chose qe tut  
iours est mis et taxe en certeyn κ.      <sup>31</sup> from aa, β, δ, κ; γ has dit.      <sup>32-33</sup> added  
from δ.      <sup>34</sup> Reported by aa, β, γ, δ, η, θ and κ.



King he then claimed only view of frankpledge, correction of assizes of bread and beer and wreck of the sea ; and the entry upon the roll was : The Prior claims these franchises only.

STAUNTON J. We find it recorded in the roll that at the general summons this same Prior made his claim to all the franchises aforenamed, and that when he was summoned to answer the King etc. he claimed only the three [first-named] ; wherefore, as to the toll, abide our judgment.

*Westcote.* The church is within age.<sup>1</sup>

STAUNTON J. This Prior can never have it, for he himself disclaimed it.

*Passeley.* The ' only ' was wrongly entered.

*Hartlepool.* Sir, on behalf of the King, I pray that you will inquire as to the amount of the toll since the last Eyre, and that the King be answered as to this.

STAUNTON J. That is just.

Judgment stands over. Upon another day :—

*Passeley.* Sir, what we are claiming is not toll, for we have neither market nor fair, but it is a customary payment by those who disembark *as above* for the trespass and damage done to our land by their disembarkation, and that cannot be said to be a royal right ; consequently, though we may be prejudiced in respect of toll, we are not prejudiced in respect of this custom.

SPIGURNEL J. That which is certainly assessed, and you demand it as a fixed amount, cannot be assigned to trespass, but is more like a royal right. Wherefore etc.

## THE KING v. THE PRIOR OF LEEDS.

Note from the Eyre Roll—*continued.*

predecessori ipsius Prioris et conuentui eiusdem Prioratus quod ipsi et successores sui imperpetuum habeant liberam Warennam in omnibus dominicis terris suis in Wodenesbergh Denstede Bordene Rikesole Renham Chetham Ledes Woteringbergh Herdesfeld Mereseye Cumdenne Lamberherst et Gatt-herst in comitatu isto. Dum tamen terre ille non sunt infra metas foreste Regis ita quod nullus intret terras illas ad fugandum in eis vel ad aliquid capiendum quo ad Warennam pertineat sine licentia et voluntate ipsorum Prioris et Conuentus vel successorum suorum supra forisfacturam Regi decem librarum. Et profert cartam ipsius Regis patris etc. que hoc testatur et quod idem dominus Rex voluit et firmiter precepit pro ipso Rege et heredibus suis quod predicti Prior et conuentus et successores sui imperpetuum habeant predictam Warennam in forma predicta cuius carte data est apud Ledes quinto die Maii anno regni eiusdem Regis patris etc. Quartodecimo. Et

<sup>1</sup> *sc.* has the privileges of an infant. See Coke, *Institutes*, II. cap. 1, p. 3, citing Glanvill, Bracton, and other authorities.

## Note from the Eyre Roll—continued.

dicit quod et ipse et predecessores sui a tempore confeccionis predictae carte hucusque predicta libertate usi sunt etc. Et eo Waranto clamat etc. Et dicit quod post confeccionem predictae carte idem Prior perquisiuit circiter sexdecim acras terre et quinque acras bosci cum pertinenciis in Ledes in quibus tenementis nullam clamat Warennam etc.

*Hartlepool*, who appeared for the King, now asked that a jury might be summoned to inquire on behalf of the King 'qualiter predictus Prior et predecessores sui usi sunt predicta Warennam post confeccionem predictae carte et si alia tenementa perquisiuerunt in Comitatu isto in predictis villis post confeccionem predictae carte etc.

I.<sup>1</sup>

Quo waranto ou le Priour pleda ceo qil ne clama a la comune somonce ou dit fut par *Hert*. qil ne poet ceo fere kar solum checun cleim par bille a la comune somonce le Roy portera son quo waranto mes fut receu pur ceo qil avoyt chartre le Roy.

Le prior <sup>2</sup>de Ledes<sup>2</sup> fust somons <sup>3</sup>de respondre al roy de play par quel garant<sup>3</sup> il clama vewe de fraunkplege amendes dassise de payn et de servoise enfreint<sup>4</sup> et fraunche garenne en ses demenes terres en C.

*Pass.* Sire nous clamoms cestes fraunchises et<sup>5</sup> infangenethef par la chartre le roi<sup>6</sup> et la<sup>7</sup> mist avant.<sup>8</sup>

*Hertepol* il nad nient clame Infangenethef par qey il ne peut pas ore avenir <sup>9</sup>de pleder<sup>9</sup> a ceo qil nad mie clame.

*Pass.* nous sumes somons<sup>10</sup> a respondre al roi par quel garaunt <sup>11</sup>nos clamoms etc. ut supra<sup>11</sup> et nous pledoms ove<sup>12</sup> lui et chalengoms<sup>13</sup> celes franchises ove<sup>14</sup> autres etc. et ceo par <sup>15</sup>fet de roi<sup>15</sup> et ceo qe nous fesoms <sup>16</sup>ore est de<sup>16</sup> record mes le cleim qe vous<sup>17</sup> fust fet<sup>18</sup> par bille et par autres qe par le prior mesme ne porte mie record mes<sup>19</sup> qe nous chalengeoms ore <sup>20</sup>sount meuz mestre<sup>20</sup> record et nient le cleim etc.

*Hertepole*<sup>21</sup> a la comune sumonce<sup>22</sup> fustes vous garni de clamer a<sup>23</sup> vostre <sup>24</sup>peril et solom vostre cleyrn mis<sup>24</sup> adonques purchasea le roi ses<sup>25</sup> quo waranto dount si vous soiez ore suffert de anoister<sup>26</sup> vostre cleim la comune somonce et le primer cleim sert de nient.

<sup>1</sup> Text of (I) from  $\gamma$  collated with  $\beta$ ,  $\delta$ ,  $\kappa$ . Head note from  $\beta$ . <sup>2-2</sup>  $\delta$  omits.  
<sup>2-3</sup> from  $\delta$ ; etc.  $\gamma$ . <sup>4</sup> added from  $\delta$ . <sup>5</sup> aa,  $\beta$  omit; de  $\kappa$ . <sup>6</sup>  $\kappa$  adds E.  
qi mort est. <sup>7</sup> aa omits. <sup>8</sup> aa adds la chartre. <sup>9-9</sup> aa omits.  
<sup>10</sup> aa,  $\beta$  omit. <sup>11-11</sup> from  $\delta$ ; etc.  $\gamma$ . <sup>12</sup> ofue aa; o  $\beta$ ; od  $\kappa$ . <sup>13</sup> clamoms  $\delta$ .  
<sup>14</sup> et aa,  $\beta$ . <sup>15-15</sup> deux Rois aa,  $\beta$ . <sup>16-16</sup> a ore porta aa,  $\beta$ ,  $\kappa$ . <sup>17</sup> aa,  $\beta$ ,  $\kappa$  omit. <sup>18</sup>  $\beta$  omits. <sup>19</sup> et ceo  $\kappa$ ; aa,  $\beta$  add ceo. <sup>20-20</sup> from  $\beta$ ;  $\gamma$  has poent  
nos mestres; porte aa; pount nos mestres  $\delta$ . <sup>21-22</sup> Al commencement aa. <sup>22</sup> ley  $\beta$ .  
<sup>23</sup> en  $\kappa$ . <sup>24-24</sup> et sur les chalenges [sic]  $\kappa$ . <sup>25</sup> son aa,  $\beta$ . <sup>26</sup> weyver aa,  $\beta$ ; enoistre  $\delta$ ; monstre  $\kappa$ .

Note from the Eyre Roll—*continued*.

The jury, consisting of jurors from the hundreds of Eyhorne, Middleton, Twyford and Merden, found:—quod predictus Prior et predecessor suus a tempore confectionis predictæ carte usi sunt hucusque libera Warennam in omnibus dominicis terris suis in hundredo de Eyhorne tantum et non aliquibus aliis locis.

The judgment was:—Ideo predictus Prior quo ad liberam Warennam in omnibus dominicis terris suis in hundredo de Eyhorne sine die etc. Et quo ad liberam Warennam in aliis terris ipsius Prioris libertas illa remaneat Regi etc. ita quod predictus Prior ea non utatur quousque etc. Et predictus Prior in misericordia etc.<sup>1</sup>

## I.

*Quo warranto* where, upon the Prior admitting that he had made no claim to infangthief at the common summons, *Hartlepool* objected that he could not make one now, for the King's writ of *quo warranto* was based upon the claims made by bill at the common summons; but as the Prior had a charter from the King he was allowed to advance his claim.

The Prior of Leeds was summoned by a writ of *quo warranto* to show to the King by what authority he claimed a view of frankpledge, the correction of the breach of assize of bread and beer, and free warren in his demesne lands in C.

*Passeley*. Sir, we claim these franchises, and infangthief as well, by charter from the King—and he made *profert* of it.

*Hartlepool*. He did not claim infangthief [at the common summons] and he cannot come now and advance an authority for what he did not claim then.

*Passeley*. We are summoned to show to the King by what authority we claim etc. *as above*; and we answer him and claim these franchises together with others etc. and we claim them by a charter from the King; and what we do now is of record, while the claims which were made by bill by others than the Prior himself were not of record. It is what we are now claiming, and not the claim etc., which is of record.

*Hartlepool*. At the common summons you had notice that you would fail to claim at your peril; and the King issued his *quo warranto* in accordance with the claim you then put forward; if, then, you are not now to be bound by your claim, the common summons and the first claim are futile.

<sup>1</sup> m. 127.



HERVI il est somouns ut supra et il met avant chartre <sup>1</sup>le roi etc.<sup>1</sup> par qey nous ne lui pooms mie forjugger etc. et <sup>2</sup>pur ceo replevisse cele qil ne clama point etc. et plede et sic <sup>3</sup>factum fuit.<sup>4</sup>

II.<sup>5</sup>

Le Prior de Ledes fut somons a respondre al Roy<sup>6</sup> par quel garant <sup>7</sup>il clame fraunchise garenne en tot ses<sup>8</sup> demenes terres en le counte de Kent.

*Ston.* mist avant la chartre le Roy qe tesmoigne qe le Prior auereit franche garenne en certain maners qil auoit en Kent.

*Ht.* a comensement de leyre clamastes vous garenne en totes vos demene terres en Kent hors de quel cleim ceti bref est issu et par la chartre qe vous mettet avant vous clamet garenne en certain terres<sup>9</sup> et issit vostre cleim desaccordant a la chartre jugement pour le Roy.

*Wescote.* coment qe avant fut clame ore vint le prior en propre persone et cleim par<sup>10</sup> le purport de la chartre et nient plus issi qe <sup>11</sup>fut en noun certain nous le mettons ore en certain.<sup>12</sup>

*Ht.* put estre qil ad pourchace altres terres en meme le conte pus la chartre grante en droit de quele terres son clame ne put estre garanti par la chartre qe est de eine tens et de ceo prioms pais pour le Roy.

*Westcote.* Le priour ad pourchase pus la chartre de garenne etc. xvj.<sup>13</sup> acres de terre .C.<sup>14</sup> acres de bois en les qeus nous ne clamons nule garenne.

*Ht.* et nous jugement pour le Roy depus<sup>15</sup> qe vous avet clame garenne en totes vos demene terres en Kent et ore desclamet en partie <sup>16</sup>est issi avez clame plus largement qe vous ne la deuez<sup>17</sup> jugement etc.

*Wescote.* Nous pernons record de court qe nous ne clamames a ore sinon par<sup>18</sup> le purport de la chartre le Roy et ceo ne put estre sinon de terres dont le prior fut seisi a tens de la chartre fete etc.

STAUNT. si nous purrioms recorder qe le prior a comensement de leyre ust clame en propre persone ou par attorne par cas la franchise serreit en point de estre perdu mes nous ne trovoms forsque un cleime<sup>19</sup> entre qe put estre fete par baillif pur quei demourge la chose desclame a Roy et nous enqueroms sil eit use la garenne pus le grant etc.

<sup>1-1</sup> *δ omits.*<sup>2-4</sup> pus replevist sa franchise et pleda κ.<sup>3-4</sup> etc. δ.<sup>5</sup> Text of second report from η collated with θ.<sup>6</sup> θ adds a moustre.<sup>7-8</sup> from θ; en ceus η.<sup>9</sup> maneres θ.<sup>10</sup> selon θ.<sup>11-12</sup> ceo qe fut

auant en Nouncertain nos le metoms ore en certain θ.

<sup>13</sup> xij. θ.<sup>14</sup> V. θ.<sup>15</sup> de houre θ.<sup>16-17</sup> added from θ.<sup>18</sup> selon θ.<sup>19</sup> from θ; η omits.

STAUNTON J. He is summoned *as above* and he tenders a charter from the King etc. and therefore we cannot prejudge the matter ; and therefore let him replevy what he before omitted to claim and then plead. *And so it was done.*

## II.

The Prior of Leeds was summoned to show the King by what authority he claims a franchise of free warren throughout his demesne lands in the county of Kent.

*Stonore* tendered the King's charter testifying that the Prior had free warren in certain manors which he held in Kent.

*Hartlepool.* At the beginning of the Eyre you claimed warren in all your demesne lands in Kent, and the present writ was based upon that claim. Now you are claiming warren in certain lands [only] by virtue of the charter which you tender, and so your claim and your charter are not in accord. Judgment for the King.

*Westcote.* Whatever may have been claimed previously, the Prior now comes in person and makes his claim in accordance with the tenour of the charter and of naught beyond it ; and consequently we are now stating certainly what was before left uncertain.

*Hartlepool.* It may be that the Prior has purchased other lands in the same county subsequently to the grant of the charter ; and he can have no warrant for his claim in respect of these lands by the charter which is of date anterior to the purchase ; and of this, on behalf of the King, we pray a jury.

*Westcote.* Subsequently to the grant of the charter of warren etc. the Prior purchased sixteen acres of land and a hundred acres of wood, and in these we do not claim warren.

*Hartlepool.* And we ask for judgment for the King, for you claimed warren in all your demesne lands in Kent and now you say you do not claim it in part of those lands ; and so you made a larger claim than you were entitled to make. Judgment etc.

*Westcote.* We rely upon the record of the Court that we have not previously claimed anything beyond the tenour of the King's charter, which cannot refer to other lands than those of which the Prior was seised at the time when the charter was granted.

STAUNTON J. If we found it recorded that the Prior had, at the commencement of the Eyre, claimed either in person or by attorney, then the franchise would be in danger of being lost, but as we find only the fact of a claim recorded, which may have been made by a bailiff, so much as is now disclaimed must remain in the King, and we will take inquest as to whether the Prior has used the right of warren subsequently to the grant etc.

LE ROI v. LA PRIORESSE DE HALIWELL.<sup>1</sup>

## Note from the Eyre Roll.

Priorissa de Haliwell summonita fuit ad respondendum domino Regi de placito quo Waranto clamat habere visum franci plegii emendas assise panis et ceruisie fracte in manerio suo de Asshe et quod ipsa et tenentes sui de eodem manerio quieti sunt de omni theolonio etc.

The Prioress appeared by her attorney. Her answer was:—quo ad predictam libertatem quod ipsa [et] tenentes sui de manerio predicto essent quieti de omni theolonio dicit quod ipsa libertatem illam habere non clamat etc. Et quo ad visum franci plegii et alias libertates predictas dicit quod ipsa inuenit ecclesiam suam inde seisitam etc. Et quod ipsa et omnes pre-

La prioresse de Holeywell<sup>2</sup> fust somons etc. <sup>3</sup>ele clama daver<sup>3</sup> fraunche garenne en ses demenes terres en C. et vewe de fraunkplege etc.

*Pass.* nous clamoms <sup>4</sup>celes fraunchises et <sup>5</sup>Infangenthef de<sup>6</sup> temps etc.

*Hertepol* vous navez clame fors soulement les ij. fraunchises et nient Infangenthef par qey vous nel poez ore clamer.

SPIGURNEL vous clamez ore cestes<sup>7</sup> fraunchises par prescripcioun par qey il semble <sup>8</sup>a ore<sup>8</sup> qe vous ne poez nient amender vostre cleim com vous purriez si vous les clamassez par chartre qe pout estre evidence a la court.

*Hertepol* nous demorroms par la en voz jugements.<sup>9</sup>

NOTA.<sup>10</sup>

*Nota* la ou homme ad fraunchise etc. tut nel cleime il<sup>11</sup> en eyre cel noun cleyrn ne ly doit nure tut soit <sup>12</sup>ceo allegge par le roi<sup>12</sup> en la precheine eyre <sup>13</sup>apres<sup>14</sup> si le roi ne peuse dire qil ust este presente<sup>15</sup> de mesme cele fraunchise <sup>16</sup>et qe la fraunchise ust este<sup>16</sup> prise en la meyn le roi mes si rien ne fust toche<sup>17</sup> de cele fraunchise <sup>18</sup>mes<sup>19</sup> cely qi la devoit la tout<sup>20</sup> en pees etc. cel nouncleyrn ne lui doit nure par <sup>21</sup>HERVI en la precheine eyre apres.<sup>22</sup>

<sup>1</sup> Reported by aa, β, γ, δ and κ. Text from γ collated with the others.  
<sup>2</sup> Haliwelle aa, δ, κ; Halywille β. <sup>3-3</sup> aa, β omit; par quel garrant δ. <sup>4-5</sup> la franchise de κ. <sup>5</sup> de β. <sup>6</sup> κ adds tut. <sup>7</sup> cele aa; tiel β. <sup>8-8</sup> from δ; γ has al roi. <sup>9</sup> agards pur le Roy aa, β, κ; agards κ. <sup>10</sup> Note from aa, β, δ, κ. Text from γ collated with the others. <sup>11</sup> aa adds mie. <sup>12-12</sup> il allegge aa, β. *The allegge of the text is substituted from δ for the plegge of κ.*  
<sup>13-22</sup> etc. par HERVY DE STANTONE δ. <sup>14</sup> aa, β omit. <sup>15</sup> foriugge κ. <sup>16-16</sup> κ omits. <sup>17</sup> touche β. <sup>18-20</sup> le seynour la tendra κ. <sup>19-20</sup> le seynur la tient aa, β. <sup>21-22</sup> SIRE HERVY DE STANTONE. <sup>22</sup> aa, β omit.



## THE KING v. THE PRIORESS OF HOLYWELL.

*Note from the Eyre Roll—continued.*

decessores sue semper hucusque a tempore quo non exstat memoria libertates illas habuerunt et use fuerunt. Et de hoc ponit se super patriam.

Et dominus Rex per *Galfridum de Hertepol* qui sequitur pro eo similiter petit quod inquiratur etc.

The Jurors of the Hundred of Akestan find: quod predicta Priorissa et predecessores sue a tempore quo non exstat memoria hucusque libertatibus predictis preter quietanciam theolonii predicti use sunt sine interrupcione.

Ideo predicta Priorissa inde sine die saluo iure Regis etc.<sup>1</sup>

The Prioress of Holywell was summoned etc. how she claimed to have free warren in her demesne lands in C. and view of frankpledge etc.

*Passeley.* We claim to have these franchises and infangthief from time etc.

*Hartlepool.* You claimed [at the commencement of the Eyre] the two franchises only, and not infangthief; and therefore you cannot claim it now.

SPIGURNEL J. You are now claiming these franchises by prescription, wherefore we hold that you cannot now amend your claim as you might have done if you had been claiming them by a charter, which would have been evidence for the consideration of the Court.

*Harilepool.* We abide your judgment on the point.

## NOTE.

Note that where a man has a franchise etc. even though he do not make claim to it in Eyre, this failure to claim ought not to prejudice him if urged against him in the next following Eyre on behalf of the King, unless [counsel for] the King can say that the claimant had been granted that franchise and that it had been taken into the King's hand; but if the franchise has been in naught diminished and the grantee has continued to hold it undisturbed, then his failure to claim it ought not to be to his prejudice in the Eyre next following. By STAUNTON J.

<sup>1</sup> m. 131.

LE ROI v. GRAUNTSON.<sup>1</sup>

## Note from the Eyre Röll.

Willelmus de Grandi sono summonitus fuit ad respondendum domino Regi quo Waranto clamat habere visum franci plegii in maneriis suis de Kemesynge et de la Sele cum membris emendas assise panis et ceruisie fracte Infongenthef Outfongenthef pillorium castigatorium tumbrellum et omnia alia que ad visum franci plegii pertinent etc.

William's plea was:—quod ipse et omnes alii tenentes maneria predicta semper hucusque a tempore quo non extat memoria libertates predictas habuerunt et eis usi sunt etc. Et eo Waranto clamat ipse habere libertates predictas etc.

*Hartlepool*, for the King, prays for an inquiry 'qualiter predicti Willelmus et alii maneria predicta tenentes usi sunt libertatibus predictis.' So the Court orders a jury to come. It consists of the jurors of the hundreds of Codesheath and Wrotham. Their finding was:—quod predictus Willelmus et omnes antecessores sui semper hucusque a tempore quo non extat memoria

Quo garranto ou il fit defaute par qey le franchise fut pris en la main le Roy e puis replevi par un atourne e clama du temps etc.

Sire Willem de Graunsom fust somons <sup>2</sup>a respondre al roi par quel garrant<sup>2</sup> il clama davoit <sup>3</sup>vewe de fraunkplege amendes dassise<sup>4</sup> de payn et de servoise etc.<sup>5</sup> fraunk garenne <sup>6</sup>en ses demene terres de<sup>7</sup> B.<sup>8</sup> Willem fust demande<sup>9</sup> et il fist defaute par qey fust commande<sup>10</sup> qe les fraunchises feusent pris en la mayn le roi <sup>11</sup>et qe le vicounte responde des issues peus apres<sup>11</sup>

<sup>12</sup>*Stonore* pur Sire Willem<sup>13</sup> Sire vous avez ci Sire W. de Grauntson qi autrefois fist defaute par qey <sup>14</sup>les franchises qil clama furent pris en la mayn le roi<sup>14</sup> ore vient il par attorne et les prie a plevyne.<sup>15</sup>

HERVI qi les doit replevir.

*Stonore* Sire Roger de Walintone.<sup>16</sup>

HERVI. eyt <sup>17</sup>sauve le droit<sup>18</sup> le roi.

*Stonore.* sire <sup>19</sup>ore dioms nous qe<sup>20</sup> nous <sup>21</sup>et touz<sup>22</sup> les tenantz de les manoirs etc. ount<sup>23</sup> use mesme <sup>24</sup>les fraunchises<sup>25</sup> com apendant etc. de temps etc.

*Hertepol.* Lenqeste coment ils ount usee<sup>26</sup> etc.

<sup>1</sup> Reported by aa, β, γ, δ and κ. Text from γ collated with the others. Head note from β; aa has the same with slight variations. <sup>2-2</sup> from δ; γ has etc. <sup>3-8</sup> etc. δ. <sup>4</sup> aa omits. <sup>5</sup> enfreinte aa, β. <sup>6-8</sup> κ omits. <sup>7</sup> en aa, β. <sup>9</sup> somons δ. <sup>10</sup> κ adds a viconte. <sup>11-11</sup> κ omits. <sup>12-15</sup> et ore vint par attorne et prie la pleuyne κ. <sup>13</sup> aa, β add Granson. <sup>14-14</sup> from δ; γ has etc. <sup>15</sup> Waltone aa, β. <sup>17-18</sup> κ omits. <sup>19-20</sup> added from δ. <sup>21-22</sup> avoms δ. <sup>23</sup> κ adds eu et. <sup>24-25</sup> la franchise aa, β, κ. <sup>26</sup> δ adds pur le roi.

THE KING *v.* GRANDISON.

Note from the Eyre Roll—*continued.*

habuerunt visum franci plegii semel in anno in predicto manerio de la Sele de tenentibus suis maneriorum predictorum de Kemesyngge et de la Sele set nulla sunt membra maneriorum illorum emendas assise panis et ceruisie fracte castigatorium et Tumbrellum quibus ipsi continue usi sunt set dicunt quod nec predictus Willelmus nec aliquis antecessorum suorum unquam infangenthef outfangenthef nec pillorium in predictis maneriis habuerunt.

The judgment of the Court was :—Ita predictus Willelmus quo ad predictas libertates quibus ipse et antecessores sui usi sunt sine die saluo iure Regis etc. et quod aliis libertatibus quibus ipsi ut predictum est usi non sunt non utatur etc. set in misericordia pro falso clamore etc. Et quia predicti Iuratores dicunt quod quidam Iohannes de Costone ballius predicti Willelmi amerciavit bracciatriores [*sic*] maneriorum predictorum ter in anno ubi semel debent amerciari in hoc casu pro assisa fracta etc. idem Iohannes in misericordia etc.<sup>1</sup>

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*Quo warranto* where the claimant had previously failed to claim and the franchise had consequently been taken into the King's hand and was afterwards replevied by attorney and claimed by prescription.

Sir William Grandison was summoned to show to the King by what authority he claimed to have view of frankpledge, correction of breach of assize of bread and beer, and free warren in his demesne lands in B. William was summoned, but he did not appear; wherefore the Court ordered that the franchises should be seized into the King's hand and that the Sheriff should be answerable for the issues. And afterwards—

*Stonore*, for Sir William: Sir, you have here Sir William Grandison who on a previous occasion made default so that the franchises which he claimed were seized into the King's hand; and he comes now by attorney and prays to replevy them.

STAUNTON J. Who is appointed to replevy them?

*Stonore.* Sir Roger of Walton.

STAUNTON J. Let him replevy, the King's right being saved.

*Stonore.* Sir, we say that we and all tenants of the manors etc. have used these same franchises as appendant etc. from time etc.

*Hartlepool* prayed an inquest as to how they had used them.

<sup>1</sup> *m.* 135 *d.*



LE ROI v. LE WALEYS.<sup>1</sup>

## Note from the Eyre Roll.

Godefridus le Waleys summonitus fuit ad respondendum domino Regi de placito quo waranto clamavit habere visum franci plegii in villa de Newendene emendas assise panis et ceruisie fracte Infongenthef pillorium Tumbrellum furcas et mercatum qualibet septimana per diem Iouis cum tol et aliis que ad visum franci plegii et mercatum pertinent etc.

Godefrey le Waleys fust somons etc. il clama diverses fraunchises en diverses manoirs.

*Hertepol* Sire a la prochein eyre lerceveschee fust vacaunte com ele est ore et vous dioms qe Jon de Pecham jadys ercevesqe feust seisi de tiele fraunchise etc. com del droit de sa erceveschee la gele G. cleime ore par prescripcioun etc. et prioms qil moustre especial graunt del roi.

*HERVI* Geffray si vous volvez dire qe Robert ercevesqe par qi mort le see est ore vacaunt fust seisi nous recevrons vostre dit mes sil ne fust nient en possessioun donques apend laccioun de ceo al ercevesqe qaunt il serra et nient al roi par reson de la vacacioun qar le roi doit meyntenir ceo dount lercevesqe morust seisi.

*Hertepol* nous aviserons dautre chose etc.

LE ROI v. LABBESSE DE MALLINGE.<sup>2</sup>

## Note from the Eyre Roll.

The Abbess of Malling was summoned to show by what warrant she claimed to have 'visum franci plegii in Estmallyng et Mallyng emendas assise panis et ceruisie fracte Infongenthef Utfongenthef furcas Tol et them [*sic*] pillorium Trebuchet sok sak et duo mercata qualibet septimana in Mallyng per diem

Quo  
Warranto.

Labesse de Mallinge fut somone a respondre a Roy par qel garant ele clama auer vewe de francplege<sup>3</sup> Marche par iour de Joudy et foire <sup>4</sup>a durer pur<sup>5</sup> ij. iours la veile<sup>6</sup> et le iour de Saint Pere.

*Wescote* Labesse vous dit qe ele cleime vewe et Marche ut supra etc. <sup>7</sup>et feyre de iij. iors sur la veives [*sic*] seint pier et le ior et lende-meyn<sup>8</sup> et troua sa eglise seisi et ly et ces predecessours vnt este seisi de tens dont <sup>9</sup>memore ne court<sup>10</sup> etc. prest etc.

<sup>1</sup> Reported by  $\gamma$  only.      <sup>2</sup> Reported by  $\eta$  and  $\theta$ . Text from  $\eta$  collated with  $\theta$ .      <sup>3</sup>  $\theta$  adds etc.      <sup>4-5</sup> from  $\theta$ ;  $\eta$  has par.      <sup>6</sup> veiee  $\theta$ .      <sup>7-8</sup> added from  $\theta$ .      <sup>9-10</sup> yniad memoire  $\theta$ .

THE KING *v.* WALSH.

Note from the Eyre Roll—*continued.*

The plea, upon which issue was joined, was that Godfrey and all his predecessors from time immemorial ‘*libertates predictas habuerunt et eis usi sunt etc. . . . et eo Waranto clamavit ipse habere libertates predictas etc.*’

The jury found that Godfrey and his predecessors had so enjoyed the challenged franchises, and so the Court gave judgment ‘*quod eat sine die.*’<sup>1</sup>

Godfrey Walsh was summoned etc. to show by what right he claimed divers franchises in divers manors.

*Hartlepool.* Sir, at the time of the last Eyre the Archbishopric was vacant as it is now; and we tell you that John of Peckham that was at one time Archbishop was seised in right of his Archbishopric of a certain franchise which Godfrey now claims by prescription; and we ask that he show a specific grant from the King.

STAUNTON J. Geoffrey,<sup>2</sup> if you want to say that Archbishop Robert, through whose death the see is now vacant, was seised, we will accept your statement; but, if he were not in possession, then the right of action will belong to the Archbishop, when he shall have been appointed; and it does not, by reason of the see being vacant, belong to the King, but the King must safeguard that of which the Archbishop died seised.

*Hartlepool.* We will consider what else etc.

THE KING *v.* THE ABBESS OF MALLING.

Note from the Eyre Roll—*continued.*

*Mercurii et diem Sabbati et tres ferias ibidem singulis annis et liberam Warennam in omnibus dominicis terris suis de Malling etc.*’

The Abbess pleads that she and her predecessors have enjoyed these franchises time out of mind, and she claims a jury. The jurors of the hundreds of Arksele<sup>3</sup> and Malling find in her favour and she goes away *sine die.*<sup>4</sup>

The Abbess of Malling was summoned to show to the King by what right she claimed to have view of frankpledge, a market every Thursday, and a fair lasting two days upon the Eve and the Day of St. Peter.

Quo  
Warranto.

*Westcote.* The Abbess tells you that she claims view and market as above and a fair of three days upon the Eve and the Day and the Morrow [of St. Peter]; and that she found her church seised [of these franchises] of which she and her predecessors have been seised from time immemorial. Ready etc.

<sup>1</sup> m. 136.

<sup>2</sup> Sc. Geoffrey of Hartlepool.

<sup>3</sup> ? Axton.

<sup>4</sup> m. 139.

*Hert.* A comensement de Leyre vous <sup>1</sup>clamastes mes<sup>2</sup> qe .ij. iours et ore clamet .iiij. jugement si vous puset vostre clam enoiter.

*Wescote.* Labbesse est ore en court <sup>3</sup>et le cleim poit pas estre fet par bailif et tot mist ele clame qel houre qil vingne<sup>4</sup> durant leyre ele serra resceu de clamer set primo oportet petere per pleuinam.

<sup>5</sup>Et [alii] e contra<sup>6</sup> ad iudicium quia prius non clamat.

*SPIGURNEL.* Si vous clamasset la franchise par la chartre le Roy qe serreit de Record court vous suffreit bien de enoiter vostre clame <sup>7</sup>mes vous nauet rien fors qe prescripcion<sup>8</sup> qe veet estre trie par pais pur quei il semble qe court vous suffreit pas clamer plus largement qe auant ne feites.

*Pass.* Nous auons par statut <sup>9</sup>qe si home cleyme par prescripcion seit auere qe le clame soit acceptable<sup>10</sup> pur quei depuis nous tendons de auerer etc. jugement etc.

Et puis fut ressu <sup>11</sup>de amender lur cleyme saver de .iiij. iors de aver feire.<sup>12</sup>

### LE ROI v. ANON.<sup>13</sup>

Quo  
Warranto.

Un home<sup>14</sup> auoit gareine en son Maner de Alspad<sup>15</sup> par la chartre le Roy qi aliena le Maner a un altre en fee simple et puis repurchaca meme le Maner et pur ceo qil ne poit la gareine clamer par prescripcion mes par la chartre par laquele il ne put la gareine granter a<sup>16</sup> estranger qe fut grante a ly et a ces heirs et ne mie a<sup>16</sup> assingnes leqel grant lie en son saunk tant com il tent le Maner sanz alienacion et il ad aliene et puis repurchaca la gareine est amorti par Justices etc.

### LE ROI v. LABBE DE FEUERSHAM.<sup>17</sup>

#### Note from the Eyre Roll.

The Abbot was summoned to show by what warrant he claimed to have the hundred of Faversham 'cum omnibus ad idem hundredum spectantibus.' The Abbot pleads that he has it by the charter of King Henry II. which granted to the monks of Faversham the manor of Faversham together with

<sup>1-2</sup> ne clamastes feire fors  $\theta$ . <sup>3-4</sup> en propre persone e cleyme ceste franchise ut supra ou le cleyme dont vous parles poet estre fet par bailif e tut mist ele rien a comencement dil Eyre quel houre quele venist  $\theta$ . <sup>5-6</sup> from  $\theta$ ; etc.  $\eta$ . <sup>7-8</sup> mais auez vous riens si non allegges prescripcion etc.  $\theta$ . <sup>9</sup> Statutum de Quo Warranto 18 Edward I. <sup>9-10</sup> from  $\theta$ ;  $\eta$  has si acun cleime franchise par prescripcion seit auere qe le clame serroit acceptable  $\theta$ . <sup>11-12</sup> added from  $\theta$ . <sup>13</sup> Reported by  $\eta$  and  $\theta$ . Text from  $\eta$  collated with  $\theta$ . <sup>14</sup> added from  $\theta$ . <sup>15</sup> Alpad  $\theta$ . <sup>16</sup> et  $\theta$ . <sup>17</sup> Reported by  $\eta$  and  $\theta$ . Text from  $\eta$  collated with  $\theta$ .



*Hartlepool.* At the beginning of the Eyre you claimed but two days, and now you are claiming three. Judgment whether you can disregard your [original] claim.

*Westcote.* The Abbess is now in court, while the [original] claim may have been made by bailiff;<sup>1</sup> and she is entitled to be received no matter at what time she comes during the Eyre, though she must first pray leave to replevy.<sup>2</sup>

And the other side joined issue and asked for judgment because of her former failure to claim.

SPIGURNEL J. If you were now claiming your franchise by virtue of a charter from the King, which would be of record, the Court would allow you to disregard your original claim, but you allege naught but prescription, which must be inquired of by a jury; and so the Court is of opinion that you must not make a larger claim than you did at first.

*Passeley.* We have it laid down by statute<sup>3</sup> that if one claim by prescription and prove the prescription by averment the claim shall be received. Wherefore since we offer to aver etc. judgment etc.

And afterwards the Abbess was allowed to amend her claim, to wit, to claim a fair for three days.

#### THE KING *v.* ANON.

A man had [free] warren in his manor of Alspad (?) by the King's charter. He alienated the manor in fee simple to another, and afterwards repurchased the same manor. [The right to free] warren was declared by the Justices to be extinguished because the claimant could not claim it by prescription but only in virtue of the charter which did not empower him to grant the warren to a stranger, for it was granted to himself and his heir and not to his assigns and could not be estranged from his blood so long as it held the manor without alienation, and the claimant had alienated and then repurchased.

Quo  
Warranto.

#### THE KING *v.* THE ABBOT OF FAVERSHAM.

Note from the Eyre Roll—*continued.*

soc and sake, toll and team, infangthief 'cum omnibus libertatibus et liberis consuetudinibus.' He claims that the hundred is one of the appurtenances of the manor granted by the charter. He appeals to the Roll of the last Eyre, and upon the inspection of this the jury finds in favour of his claim.

<sup>1</sup> I translate the gist of the reading of *θ*, given in the footnote, rather than the actual text, which is obviously corrupt.

<sup>2</sup> *Sc.* the franchises which had been seized into the King's hand through non-claim.

<sup>3</sup> Statute of Quo Warranto, 18 Edward I.

Quo  
waranto.

Labbe de Faueresham fut somone a respondre a Roy a mostrer<sup>1</sup> par quel<sup>2</sup> garant il cleime<sup>3</sup> vewe de francplege et le hundred de Fauersham.

Labbe vint et dit qil clame les franchises susdits<sup>4</sup> apurtenant a son Maner de Fauersham et ly et ces predecessours seisi de tens dont memoire ne court<sup>5</sup> prist etc.<sup>6</sup>

*Hert.* Hundred est une chose reale qe ne put<sup>7</sup> a lei commune<sup>7</sup> estre a altre qe a Roy et labbe ne met pas especialte a la court qe proue la franchise auant dite estre<sup>8</sup> a li<sup>9</sup> grante enz tend de auerer par pais qe ly et ces predecessours vnt este seisi de tens etc. com apurtenant etc. jugement si par tel auerement sanz chartre le Roy tele franchise qe apent a sa realte puisse clamer.

*Stonore.* Le Maner de Fauersham a qi la franchise auant dite est regardant<sup>10</sup> fut en la seisine de tel Roy qi dona le Maner ou lez apurtenances al Abbe de Fauersham et a ces successours etc. et issi le vnt vse de antiquite com apurtenant etc. prest etc.

STAUNTONE. Tot le clama il com un gros et ne pas com apendant il serreit bon ressu al auerement en la foren<sup>11</sup> com il le tend et stetit verificacio mes si le hundred seit apurtenant a un Maner qe seit aliene en estrange saunk puis tens de memoire fet a demander si le purchasour auera lauerement qe ly et ceus qi vnt tenu le Maner a qi le hundred est apurtenant vnt este seisi ut supra etc.

## LE ROI v. LABBE DE REDYNG.<sup>12</sup>

### Note from the Eyre Roll.

Abbas de Redyng summonitus fuit ad respondendum domino Regi quo Waranto clamat habere in manerio suo de Wynhull in Hoo liberam Warenam in omnibus dominicis terris suis manerii predicti et in eodem manerio visum franci plegii furcas et Weyf et quod amerciamenta de hominibus suis et tenementis suis seu forisfacientibus quibuscunque infra libertatem suam nulli dantur nisi soli Abbati Tumbrellium et Theu assisam panis et ceruise Infongenethef et Outfongenethef.

The Abbot's plea by his attorney was:—quod dominus Henricus Rex auus domini Regis nunc postmodum concessit et carta sua confirmauit quod Abbas et Monachi de Redyng haberent liberas Warennas suas ubicunque eis placuerit in terra sua etc. et si que mercie<sup>13</sup> hinc inde peruenirent Abbas et monachi predicti eas soli haberent etc. Et quod predicti Abbates et Monachi haberent iusticiam de assaltu sanguinis effusione et pacis infraccione et thesauri inuencione quicquid ad regiam pertinet potestatem et quod mercie nulle quacunque occasione de predictis Abbate vel Monachis vel de tenementis

<sup>1-2</sup> al  $\theta$ .      <sup>3</sup>  $\theta$  adds auer.      <sup>4</sup> added from  $\theta$ .      <sup>5-6</sup> from  $\theta$ .      <sup>7-7</sup> A conjectural reading.  $\theta$  is even more cryptic.      <sup>8-9</sup> added from  $\theta$ .      <sup>10</sup> See *Introduction*, p. xlviii.      <sup>11</sup> Manere  $\theta$ .      <sup>12</sup> Reported by  $\alpha$ ,  $\alpha\alpha$  and  $\beta$ . Text from  $\alpha$  collated with  $\beta$ .      <sup>13</sup> These usually went to the King.

The Abbot of Faversham was summoned to answer the King and to show by what right he claims view of frankpledge and the hundred of Faversham. Quo Warranto.

The Abbot came and said that he claims the franchises named above as appurtenant to his manor of Faversham and that he and his predecessors had been seised of them from time immemorial. Ready etc.

*Hartlepool.* A hundred is a royal peculiar which by the common law can belong to none but the King, and the Abbot does not tender to the court a charter in proof of the grant of the aforesaid franchise to him, but offers to aver by jury that he and his predecessors have been seised from time etc. as appurtenant etc. Judgment whether he can claim by such averment, without a charter from the King, a franchise such as this that is a royal privilege.

*Stonore.* The manor of Faversham to which the franchise aforesaid is regardant was in the seisin of a certain King who granted the manor together with the appurtenances to the Abbot of Faversham and his successors etc. and they have so used it from ancient times as appurtenant etc. Ready etc.

STAUNTON J. Even though the Abbot were to claim the hundred as a gross and not as appendant he would certainly be received to such an averment as he is offering in any court outside the manorial jurisdiction—and the averment was allowed—but if the hundred be appurtenant to a manor which has been alienated to a stranger within the limit of memory then it is questionable whether the purchaser would be allowed to aver that he and those who had held the manor to which the hundred is appurtenant had been seised *as above* etc.

### THE KING v. THE ABBOT OF READING.

#### Note from the Eyre Roll—continued.

vel de hominibus eorum exigerentur nec exacte soluerentur set omnia que eorum essent ita quietia essent et libera sicut Regis propria et soli Abbati et Monachis de omnibus respondencia et quod iidem Abbas et Monachi haberent de hominibus suis et de tota possessione sua et de alienis in ea forisfacientibus vel ibi cum forisfacturis interceptis et placita omnia cum sok et sak et tol et Theam Infangenthef et Outfangenthef in omnibus locis cum omnibus causis que sunt vel esse possunt. Et hec omnia pro se et heredibus suis seruari concessit et que omnia Rex Henricus filius conquestoris eis donauit et Henricus Rex auus predicti Regis Henrici aui predicti domini Regis nunc et dominus Iohannes Rex pater ipsius Regis Henrici aui domini Regis nunc postea eis concesserunt et cartis suis confirmauerunt. Et profert inde cartam predicti domini Henrici Regis aui domini Regis nunc que predicta testatur etc. cuius Datum est decimo nono die Februarii anno regni sui undecimo et eo Waranto clamat ipse habere libertates predictas etc.



## Note from the Eyre Roll—continued.

The replication of *Geoffrey of Hartlepool* on behalf of the King was:—quod Abbas de Redyng alias coram Iohanne de Berewyk et sociis Iusticiariis domini Edwardi Regis patris domini Regis nunc Itinerantibus apud Cantuariam in ultimo Itinere precedenti clamavit habere visum franci plegii et ea que ad visum pertinent furcas Weyf et liberam Warennam in Hoo per cartam predicti domini Henrici Regis aui etc. quam ibi protulit et ille libertates et non alie tunc ei in Itinere illo allocate fuerunt prout patet per rotulos predicti Iohannis de Itinere illo unde petit iudicium si alie libertates quas tunc non clamavit nec ei allocate fuerunt modo sibi allocari debeant etc.

The Abbot's rejoinder was:—quod per cartam quam ipse modo profert testatur quod dominus Henricus Rex filius conquestoris dedit Abbacie sue omnem libertatem quam Regia potestas alicui Abbacie conferre potuit. Et quod dominus Henricus Rex auus domini Regis nunc libertates suas predictas ut predictum est Abbacie sue predictae concessit et omnia que predictus dominus Henricus filius conquestoris eis donavit pro se et heredibus suis seruari concessit. Et dicit quod virtute concessionum predictarum ipse et omnes predecessores sui a tempore quo non extat memoria omnes predictas libertates quas ipse modo clamat preter Warennam predictam quam predictus dominus Henricus Rex auus domini Regis nunc per cartam suam predictam

## Nota de quo waranto de wareine.

[Nota] que en quo warento qe labbe de Redingham<sup>1</sup> clama qe ne fut mie clame au comencement dil eyre de tolnu et de garrenne.

SPIC. si jeo fusse Roi ieo grauntasse volunters garrenne<sup>2</sup> qe au comencement le roi auera <sup>3</sup>pur le graunt<sup>4</sup> xj. marz et demi et puis la forfeiture de garrenne de ceux qe averent chace en autri garenne encountre lour volente x.<sup>5</sup> li. et si celui a qi la garrenne est preigne<sup>6</sup> amercement de ceux qe averont en sa garrenne chace encountre sa volente le seignur perdra sa garrenne et <sup>7</sup>dout coment qil<sup>8</sup> fra fin au Roi pur ceo qil attret<sup>9</sup> a lui ceo qe a Roi aufert etc. qe cheskune chartre le Roi de garrenne<sup>10</sup> dit salva nobis forisfactura et issi e tout le profit au Roi forsque le seignur puet aver le deduit de prendre a sa volente et la value des bestes pris en sa garrenne<sup>10</sup> saver pur leverre iij. maills pour conyng<sup>11</sup> iiiiij. d. et issi des autres bestes de garrenne<sup>12</sup> solone lassise.

NOTA.<sup>13</sup>

Nota par SPIGURNEL qe cely qe ad garrenne et il preigne les amendes pour trespas fait en sa garrin de Sussee en tant com il etc. pris les amendes saunz ceo qe le Roi ust la forfeiture pur ceo qe quant le Roi grant garren

<sup>1</sup> Ridig β.      <sup>2</sup> Wareine β.      <sup>3-4</sup> β omits.      <sup>5</sup> xj. β.      <sup>6</sup> pringe β.  
<sup>7-8</sup> from β; a omits.      <sup>9</sup> ad tret β.      <sup>10</sup> Wareine β.      <sup>11</sup> cony β.  
<sup>12</sup> garoyne β.      <sup>13</sup> Note from δ.

*Note from the Eyre Roll—continued.*

Abbacie sue predicte concessit que alias in predicto Itinere precedenti allocata fuit etc. habuerunt et usi sunt etc. unde dicit quod licet predecessor suos illas libertates in illo Itinere precedenti non clamavit eo quod tunc ad illud summonitus non fuit etc. hoc ei et Abbacie sue predicte preiudicare non debet etc.

*Hartlepool* now prays 'quod inquiratur qualiter usi sunt libertatibus predictis'; and a jury is called.

The finding of the jurors of the hundreds of Shamele and Hoo was:—quod predictus Abbas et omnes predecessores sui semper hucusque a tempore quo non extat memoria omnes libertates predictas preter Warennam predictam habuerunt et eis sine interrupcione usi sunt set dicunt quod ipsi nunquam usi fuerunt Warennam predicta.

And so the Court gave judgment that 'predictus Abbas quo ad omnes libertates predictas preter Warennam predictam inde sine die salvo iure Regis etc. et quo ad predictam Warennam remaneat Regi etc. Ita quod predictus Abbas ea non utatur etc. Et predictus Abbas in misericordia etc.'

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*Note of a quo warranto as to free warren.*

Note that in appearing to a *quo warranto* the Abbot of Reading claimed toll and warren which he had not claimed at the beginning of the Eyre.

SPIGURNEL J. If I were King I would grant warren readily enough; for, to begin with, the King gets eleven marks and a half for the grant; then he gets a fine of ten pounds for breach of warren from anyone who hunts in another man's warren, and if the lord of the warren accept compensation from any who have hunted in his warren without his permission he will lose his warren, and that just the same though he make fine with the King for having taken to his own advantage what belonged to the King etc., for every charter of warren granted by the King recites that all penalties belong to the King<sup>1</sup>; and so the King gets all the profit, except that the lord may amuse himself by hunting whenever he likes and may sell what he kills in his warren at the prices allowed by the assize, that is three halfpence for a hare, fourpence for a rabbit, and so on for the other beasts of the chase<sup>2</sup>.

## NOTE.

Note that SPIGURNEL J. held that the lord of a warren who accepted compensation for trespass committed in his warren of S., so that the King lost the penalty, did not use his warren in accordance with his grant, for when the King grants warren to anyone he reserves to him-

<sup>1</sup> But see the Abbot of Reading's plea on p. 191.

<sup>2</sup> See *Introduction*, p. xlix.

a ascun il reserue a ly la forfeiture des trespas en meme la garren dount celly a qi le garren est preigne les amendes saunz ceo qe le Roi seit serui de ceo qe appent il ne vse my la garren solom son garante.

NOTA.<sup>1</sup>

Nota vn home pust clamer un article de vewe de francplege saver assise enfrente Pillorie Tumbrel Saunk espandu Waif. Celuy qi cleime fraunchise en cite plus auaunt quil neit garrant si troue soit par record de autre ou par sa chartre demene qil ne deit pas en tiele manere auoir le il serra foriuge de exc[ercice] et la fraunchise prisserra en la main le Roi celui qi cleime chateux de futif de feloun de ses homes et de ses tenantz done par chartre le Roi ou prescripcioun si troue soit qe le laroun futif ou atteint tient de an en an en louage il ne put rien demander qar il ne fut pas soun tenant en tiel cas sil nust fee ou fraunchise.

NOTA DE LABBE DE SEINT AUSTIN.<sup>2</sup>

Presente fust qe labbe de seint Austin tynt une terre en O. qe fust en ascun temps en la mein un tenant le quel tenant et ses auncestres tut temps soleient escoter par reson de la terre oue les genz de la ville cest asauoir as comunes finz et comuns amerciments etc. et labbe tient ore la terre et ne voet rienz escoter etc. Labbe a ceo respons vient et dit qe le Roy Edgar qi fust secunde Roy Cretien en Engleterre dona a un Johan predecessour etc. et a sa eglise a touz iours en pure et en perpetuele almoynes le maner de N. par sa chartre quele fust moustre en demene et en seruiz et dit qe tele terre dount il parlerun fut tenue del maner auant-dit et pus Robert tenant de cele terre cessa des seruices par .ij. aunz pur quoi cele fust agarde par agard del counte a un des predecessours de labbe et par vsage de gauelkend et issi dit il qil fust seisi de cele terre par resoun de seignourie en lestat qe les tenemenz furent quant primes furent bailles hors et de sicom la terre fust en leu des services recouere descharge de tote manere des charges avenuz de plus basse il demande iugement si ore deieue escoter et ceo fust troue par .xij. jurez pur qei il passa de ceo quites.

<sup>1</sup> Note from κκ.<sup>2</sup> Note from κκ.



self the penalty for any trespass committed in that same warren ; and, consequently, if the lord of the warren take compensation, with the result that the King loses that to which he has a right, he is not using his warren in accordance with his grant.

## NOTE.

Note that a man may claim a single article of view of frankpledge, as, for instance, breach of assize, pillory, tumbrel, bloodshed, waif. If a man claim to have a more extensive franchise in a city than he has warrant for, and it be shown by independent testimony or by his own charter that he has not the franchise after such fashion, he shall be deprived of it and the franchise shall be seized into the King's hand. He who claims to have either by charter from the King or by prescription the chattels of a fugitive felon that is his man or his tenant can claim naught if it be found that the fugitive or convicted felon held only on a yearly letting, for in such circumstances he was not his tenant, having neither fee nor franchise.

## NOTE AS TO THE ABBOT OF ST. AUGUSTINE'S.

Presentment was made that the Abbot of St. Augustine's holds land in O. which at one time was in the hand of a tenant, which tenant and his ancestors had been accustomed from time immemorial to pay, in common with the people of the vill, their proportionate share in respect of their land, that is to say of the common fines and amercements etc., and the Abbot now holds the land and will not pay aught etc. The Abbot comes in answer and says that King Edgar who was the second Christian king in England gave by his charter—which was tendered—to one John, predecessor etc. and to his church for ever the manor of N. in pure and perpetual alms to hold in demesne and service ; and he says that the land referred to was held of the manor aforesaid ; and afterwards Robert the tenant of that land failed to render for a space of two years the services due in respect of the land ; and the land was consequently, by the custom of gavelkind, adjudged by the county court to one of the Abbot's predecessors ; wherefore the Abbot says that by reason of his lordship he is seised of that land subject to the conditions under which the tenements were when they were first leased ; and since he recovered the land, in lieu of the services, free from all manner of charges subsequently attaching to it, he asks judgment whether he ought now to pay his scot. And the twelve jurors found even as the Abbot had said, and therefore he went away quit of this.

NOTA.<sup>1</sup>

Nota qe vewe de frankplege ne donne mye conisaunce de pleder play de corone tut soit un laron pris oue mainoure dedainz sa veue mes sil eit Infangentef il fust leuer fourches et auer conisaunce de mainoure faite deinz sa fraunchise et ne mye dehors com il aparust a labbe de seint Austyn qe de ceo fust atteint.

NOTA.<sup>2</sup>

Et nota qe utfangenthief nest autre fors tantsoulement dauoir iuyse de vostre resteaunt atteint de felonie de hors vostre fraunchise deuaunt Justices. Question si en autri court qad Infangenthef tut soit il acquite en le Eyre par presentement il serra pris et aresne et soi mettra pur ceo qe la court avantdite ne porte record del aquitance mes si iugement se face qil soit pendu la dite court porte record etc. et en tiel cas la ville respond des chateux del feloun et si autre eit happe les chateux et ceo soit presente en Eyre il rendra sil soit en vie et sil soit mort ses executours ou soun heir etc.

## REPLEVINA.

MARESCHAL v. ANON.<sup>3</sup>

Replevina  
celi qi porta  
le breve  
connu qe  
les auers ne  
furent pas  
ses soens.

<sup>4</sup>Roger le Mareschal<sup>4</sup> se plaint qe R. de N. a tort prist ses auers etc.<sup>5</sup>

*Pass.* vous auez afferme la proprete des auers en vostre persone par breve et par counte nous vous dioms qe les auers ne sont pas les vos einz a un N.<sup>6</sup> jugement si des autri auers <sup>7</sup>proprete pussez avower.<sup>7</sup>

*Stonore.*<sup>8</sup> les auers sunt en nostre garde issint qe si <sup>9</sup>il furent<sup>9</sup> perduz <sup>10</sup>il nous couendreit respondre et la prise il ne dedront<sup>11</sup> point jugement etc.<sup>12</sup>

*Asseby.* vous <sup>13</sup>aeuez afferme<sup>13</sup> primes proprete en vostre persone et ore auez afferme proprete en autri persone jugement et prioms retourn.<sup>14</sup>

<sup>15</sup>Fust dit a lui qil deit autre chose.<sup>15</sup>

*Pass.*<sup>16</sup> auowa pour damages fesant en son seueral.

HERUI. estes vous seignour du soil.

<sup>1</sup> Note from κκ. <sup>2</sup> Note from κκ. <sup>3</sup> Reported by aa, γγ, λ. Text from aa collated with the others. <sup>4-4</sup> Richard le Mach. λ. <sup>5</sup> γγ, λ omit.

<sup>6</sup> Johan γγ. <sup>7-7</sup> pussez accion auer λ. <sup>8</sup> Seale λ. <sup>9-9</sup> ils furent γγ; eux ussent este λ. <sup>10-12</sup> nous ussoms responduz la quele prise vous ne dedites pas λ. <sup>11</sup> dedient γγ. <sup>13-13</sup> affermetz γγ. <sup>14</sup> λ adds pur ceo qe nous les

trouames en nostre seuerale damage fesant. <sup>15-15</sup> λ omits. <sup>16</sup> As. λ.

## NOTE.

Note that view of frankpledge confers no authority to plead pleas of the Crown, not even in the case where a thief is taken within the lord's view with stolen property in his possession. But if the lord have Infangthief he may erect gallows and deal with thieves taken within his franchise, but not with those taken without it; as appears in the case of the Abbot of St. Augustin's who was convicted of this.

## NOTE.

And note that Outfangthief is merely the right to execute judgment upon a resident within your manor that has been convicted before justices of felony outside your manor. It is a matter of doubt whether one that has been acquitted in a court that has infangthief can be arrested after presentment in Eyre and arraigned and made to put himself upon a jury, since such aforesaid Court does not record acquittals; but if judgment had been given of him that he should be hanged, the aforesaid Court would have recorded such judgment; and in that case the vill would have been answerable for the felon's chattels; and if another have appropriated the chattels, and presentment of this be made in Eyre, he shall surrender them if he be alive, or, if he be dead, his executors or his heir etc.

## REPLEVIN.

MARSHAL *v.* ANON.

Roger Marshal complains that R. of N. has wrongfully taken his beasts etc.

Replevin.  
The  
complainant  
admits that  
the cattle  
are not his.

*Passeley.* By your writ you asserted that the property of the beasts was in yourself, and now, by your counting, you say that the beasts are not yours but one N.'s. Judgment whether you can now avow property in another's beasts.

*Stonore.* The beasts are in our custody, so that we should be liable if they were lost, and they do not deny that they took them. Judgment etc.

*Ashby.* You first affirmed that the property was in yourself, and now you affirm that it is in someone else. Judgment, and we pray return [of the beasts].

He was told to say something else.

*Passeley* avowed for *damage feasant* in his several.

STAUNTON J. Are you the lord of the soil?



*Stonore*<sup>1</sup> il nad qe comune en le soil et de pus qe vous auez comune sufficeant jugement <sup>2</sup>si pur damages fesant.<sup>3</sup>

*Pass.*<sup>4</sup> et nous jugement si de autri auers <sup>5</sup>damage pussez recouerir et proprete clamer.<sup>5</sup>

*SPIGURNEL.*<sup>6</sup> pur ceo qe vous auez conu qe les auers ne sont pas les vos si agarde la Court <sup>7</sup>qil eit retourn<sup>7</sup> des auers et face le seignour la deliuerance sil vodra.

### FULMEDE v. LABBE DE SEINT AUSTIN.<sup>8</sup>

#### Note from the Eyre Roll.

Dionysia of Fulmede complained that the Abbot of St. Augustine's, Canterbury, John of Peckham, one of his monks, and John, his bailiff or beadle, seized and unlawfully detained certain cattle belonging to her.

The count was:—quod predictus Abbas simul etc. die Martis proximo ante festum sancte Margarete virginis anno regni Regis nunc sexto apud Northburne in quodam loco qui vocatur Oxenetege cepit tres vaccas ipsius Dionisie. Et die veneris proximo post festum sancte Margarete virginis proximo sequente in predictis villa et loco cepit tres vaccas ipsius Dionisie et eas iniuste detinuit contra vadium etc. quousque etc. unde dicit quod deteriorata est et dampnum habet ad valenciam decem librarum. Et unde producit sectam etc.

The Abbot's plea by his attorney was:—Defendit vim et iniuriam quando etc. Et bene aduocat predictas capciones iustas etc. Quia dicit quod

Dyonise de Dunnesmede porta son Replegiare vers labbe de Seint Austin<sup>9</sup> de Cantebirs et dist qe a tort prist ses auers nomement .ij. vaches etc. <sup>10</sup>lan .vj.<sup>10</sup> et .ijj. vaches etc. <sup>11</sup>apres en mesme le an.<sup>11</sup>

*Stonore.* labbe auowe <sup>12</sup>cete prise bone.<sup>12</sup> Et par la response<sup>13</sup> qe mesme ceste Dyonise auoit fet diuers trespas al dit Abbe et pur ceo qe ele est tenant labbe de son Manere de Storbire<sup>14</sup> ele fust attache a respondre al dit Abbe en sa court demene de N. de diuers trespas ou ele vint en court et ne poit cels trespas dedire pur quoi ele fust amercie par agard de ses pieres de la dit court et ele pria taxacion de la court et fust taxe par <sup>15</sup>la court<sup>15</sup> en .xl. s. a la court tenue a tiel iour<sup>16</sup> et pur .xx. s. del dit amerciement avowe il la prise bone et dreite<sup>17</sup> en dreit des .ij. vaches et pur les autres xx. s. <sup>18</sup>de les .ijj. vaches<sup>18</sup> en mesme la manere.

*Pass.* nous demandoms jugement de la forme de <sup>19</sup>ceste auower<sup>19</sup> car

<sup>1</sup> Seale λ. <sup>2-3</sup> λ omits. <sup>3</sup> γγ adds etc. <sup>4</sup> As λ. <sup>5-5</sup> etc. λ. <sup>6</sup> METINGHAM λ. <sup>7-7</sup> qe vous eiez retorn λ. <sup>8</sup> Reported by aa, γγ and λ. Text from aa collated with γγ and λ. Names of the parties from the Eyre Roll. <sup>9</sup> Augustin γγ. <sup>10-10</sup> λ omits. <sup>11-11</sup> λ omits. <sup>12-12</sup> from λ; etc. aa, γγ. <sup>13</sup> reson γγ, λ. <sup>14</sup> Norbire γγ, λ. <sup>15-15</sup> ses peres λ. <sup>16</sup> λ adds devant les prises dunt ele se pleint. <sup>17</sup> dreiturele γγ, λ. <sup>18-18</sup> λ omits. <sup>19-19</sup> cel auowerie γγ, λ.

*Stonore.* He has naught but a common in the soil, and that is enough, since you have a common. Judgment for *damage feasant*.

*Passeley.* And we ask for judgment whether you can recover damages in respect of [the seizure of] another's beasts and claim property in them.

SPIGURNEL J. Because you have admitted that the beasts are not yours the Court gives judgment that they be returned to the defendant ; and let the lord deliver them if he will.

### FULMEDE v. THE ABBOT OF ST. AUGUSTINE'S.

#### Note from the Eyre Roll—*continued*.

predicta Dyonia tenens ipsius Abbatis attachiata etc. ad sectam ipsius Abbatis ad respondendum ipsi Abbati in Curia ipsius Abbatis de Northburne de diuersis transgressionibus eidem Abbati per ipsam Dyoniam illatis etc. venit ad Curiam ipsius Abbatis apud Northburne tentam die lune proximo ante festum sancti Georgii anno regni Regis nunc quarto et non potuit dedicere transgressionibus illas etc. Et petiit taxacionem dampnorum etc. Ita quod consideratum fuit in eadem Curia per sectatores Curie illius quod idem Abbas recuperaret versus eam dampna sua que taxabantur per eosdem sectatores pro transgressionibus illis ad quadraginta solidos. Et dicit quod quia eadem Dyonia predictos quadraginta solidos ei reddere noluit cepit ipse predicta aueria in predicto loco in feodo suo sicut ei bene licuit etc.

The case was remitted to the Justices of the Bench at Westminster upon the petition of the complainant.<sup>1</sup>

Dionysia of Dunsmede brought her *replegiare* against the Abbot of St. Augustine's of Canterbury and said that the Abbot had wrongfully seized her cattle, to wit, two cows etc. in the sixth year [of the King's reign] and three cows later in the same year.

*Stonore.* The Abbot avows good distress. And he says in answer that this same Dionysia had committed divers trespasses against the said Abbot ; and, because she is a tenant of the Abbot of his manor of Northbourne, she was attached to answer the Abbot in his own court of Northbourne of divers trespasses, and she came into the court there and could not deny those trespasses ; wherefore she was amerced by the judgment of her peers of that same court ; and she prayed assessment of damages by the court, and they were assessed by the court at forty shillings, by the court held on such a day ; and the Abbot avows good and lawful distress of two cows for twenty shillings of the said amercement and similarly of three cows for the other twenty shillings.

*Passeley.* We ask judgment of the form of this avowry, for you

<sup>1</sup> m. 101.



vous auez auowe pur un amercement pur diuers trespas et ne dites pas<sup>1</sup> pur queux trespas qe tiel trespas poet estre qe<sup>1</sup> labbe ne poet auer conisance en sa court demene<sup>2</sup> par ceste auower la court ne poet estre asserte pur quoi etc.

*Wescote.* nous<sup>3</sup> sumus pas cy a pleder les trespas nie le jugement mais soulement a excuser le tort qe nous est surmis pus<sup>4</sup> execucion de un jugement dont nous sumus ministres<sup>5</sup> mais sil comande fust al vicounte qil freit<sup>6</sup> leuer certains deners de un B. qe A. ad recouerez vers lui pur un trespas a lui fet et le vicounte fet <sup>7</sup>la destrainte<sup>7</sup> et B. feit la deliuerance assez suffist<sup>8</sup> de auower selon le comandement qil auoit sanz ceo qil die pur quel trespas.<sup>9</sup>

SPIGURNEL<sup>10</sup> il unt dit qe vous conustes diuers trespas en la court etc. et priastes etc. ut supra et fustes taxe et affere par vos pieres a tiel hure<sup>11</sup> deuereietz vous auer demande ceo qe vous ore demandez saver pur quel trespas et ne mie ore car il ne sunt a ore a pleder le trespas.

*Pass.* sil ne deit ore demander pur quel trespas si ensuereit qil poet fere xx. auoweries pur un trespas qi serreit grant duresse de<sup>12</sup> lei.

GOLDINGTON. sil soufist autres foitz auower mesme la prise a mesme le iour la court auereit bien conisance de ceo.

*Cant.* si labbe vous ad fet autre jugement qe bon suffrez le execucion et reuersez le jugement par autre voie car il nest pas a celui<sup>13</sup> a pleder le jugement qe deit fere le execucion <sup>14</sup>et vous<sup>14</sup> ne deuez mes conustre si le jugement seit bon ou malvais<sup>15</sup> a qi vous estes partie.<sup>16</sup>

*Pass.* celui <sup>17</sup>qest a fere<sup>17</sup> le execucion de cel jugement fust juge et partie al jugement quest en contre lei de terre pur quoi il couent dire quel trespas.

SPIGURNEL. vous estes cy en une prise des auers et vous lui surmettez un tort et il se escuse de cel tort par un execucion qi fust a fere de un jugement <sup>18</sup>et ceo lui suffist<sup>18</sup> car le jugement ne put estre reuerse par cesti breve.

*Pass.* lauower<sup>19</sup> est en noun certain sil ne dit quel trespas pur quoi nous demandoms jugement de la forme.

*Frisk.* si nous deissoms ore pur quel trespas vous ne serriez nient ressu a trauerser <sup>20</sup>nient pur tiel trespas<sup>20</sup> qe ceo nest pas issue en cesti breve.

<sup>1-1</sup> qel trepas et poet estre tiel trespas dount γγ, λ. <sup>2</sup> γγ, λ add dount.  
<sup>3</sup> γγ, λ add ne. <sup>4</sup> pur γγ; par un λ. <sup>5</sup> λ adds auxi etc. <sup>6</sup> fait γγ, λ.  
<sup>7-7</sup> destresse γγ, λ. <sup>8</sup> λ adds au viconte. <sup>9</sup> λ adds auxi de sa.  
<sup>10</sup> λ adds ad idem. <sup>11</sup> temps γγ, λ. <sup>12</sup> en λ. <sup>13</sup> λ adds a fere ne.  
<sup>14-14</sup> γγ, λ omit. <sup>15</sup> maueys γγ, λ. <sup>15-16</sup> del houre qe vous fuites meme  
partie a ceo jugement λ. <sup>17-17</sup> qe fit λ. <sup>18-18</sup> qe assetz ly suffit γγ, λ.  
<sup>19</sup> lauowerie γγ, λ. <sup>20-20</sup> λ omits.



have made avowry of an amercement for divers trespasses and you do not say for what trespasses, and it may be that the trespasses were such as the Abbot had not authority to deal with in his own court. The court is not able to certify itself of this avowry, wherefore etc.

*Westcote.* We are not here to plead trespass or judgment but merely to defend ourselves against the allegation of tort made against us because we executed a judgment which it was our duty to execute. If the sheriff received command to levy on B. a certain sum of money which A. had recovered against him by reason of some trespass committed upon him, and the sheriff distrained and B. replevied, it would be quite sufficient if the Sheriff pleaded in answer the command he had received, without stating the actual nature of the trespass.

SPIGURNEL J. They have told you that you confessed divers trespasses in the court etc., and that you prayed etc. *as above*, and that you were taxed and assessed by your peers. It was then that you should have demanded what you are now demanding to know, the nature of the trespass charged against you, and not now, for the defendant is not here to answer an action of trespass.

*Passeley.* If she cannot inquire now as to the nature of the trespass, there is nothing to prevent the defendant basing a score avowries upon a single trespass, and that would be very oppressive law.

GOLDINGTON J. If he attempted to avow this same distress on this same day at another time the Court would certainly take cognizance of the fact.

*Cambridge.* If the Abbot's judgment of you is bad, suffer the execution and get the judgment reversed in some other way, for it is not for him who must execute to plead a judgment, nor can you admit a judgment to which you are party to be either good or bad.

*Passeley.* The same person that had to execute the judgment was judge and party to the judgment, and that is against the law of the land<sup>1</sup>; and so he must specify the trespass.

SPIGURNEL J. You are here in respect of a seizure of cattle, and you allege tort against the defendant. He justifies himself by alleging that what he did was done in execution of a judgment which it was his duty to execute. And that defence is sufficient for him, for the judgment cannot be reversed under this writ.

*Passeley.* His avowry is of an uncertainty if he does not specify the trespass; therefore we ask judgment of the form.

*Friskenev.* Even though we did now specify the trespass you would not be allowed to traverse and say 'not for the said trespass,' for that is not the issue under this writ.

<sup>1</sup> *Sc.* the common law.

*Pass.* Ieo di<sup>1</sup> qe si serreit depuis qil fust mesme juge et partie.

*Malm.* il put fere<sup>2</sup> altre est a dreit<sup>3</sup> pur quei nient lui mesme de son tenant demene en sa court demene.

SPIGURNEL. pur qange vous auez dit uncore lauowerie est assez bone pur quoi dites outre.

*Pass.* <sup>4</sup>uncore vous dioms nous qe a tiel auowerie ne deit il auenir<sup>4</sup> Car la ou il vnt dit qe Dionise conist le trespas et pria taxacion et ne vnt pas dit de quel trespas ele fust arene<sup>5</sup> ne quel trespas ele conust ne de quel ele pria taxacion.

*Malm.* nient plus couendra ceo dire qe<sup>6</sup> ne couendreit dire quel trespas ele auoit fet car tut refert a vn<sup>7</sup> et ceo prouent les resons auant dit qe nient plus serretz vous ressu si nous deissoms qe ele conust tiels trespas qe de tiels trespas arene fust a dire qe <sup>8</sup>noun qe vous ne serrez a lautre trauers.<sup>9</sup>

<sup>10</sup>*Pass.* si vous deissez qe nous fussoms arene de tiel trespas nous serroms ressu a dire qe de nul tiel trespas arene.<sup>10</sup>

*Frisq.* uncore ne serra pas <sup>11</sup>ceo trauers etc.<sup>12</sup>

*Pass.* vous dites en auowant qele conust diuers trespas et auowez pour une execution de un jugement pur diuers trespas la ou lei de terre ne soeffre pas qe home pusse <sup>13</sup>de diuers trespas auer<sup>13</sup> un<sup>14</sup> jugement mais pur chesqun trespas un<sup>15</sup> jugement pur quei ceste auowerie nest pas soeffrable.

*Cant.* si nous fussoms cy a pleder le jugement nous vous deissoms assez mais nous ne auoms mester a ceo faire car vous auez vostre recouerir par autre voie.

HERUY.<sup>16</sup> si vous auez fet un faus jugement en vostre court entendez vous qe nous feroms un autre pur aforcer<sup>17</sup> le vostre nanil etc.

#### ANON. v. ANON.<sup>18</sup>

Roberd fut destreint par un Alexandre et porta son replegiari. Alexandre clama proprete pur quei le vicounte ne poet deliuerance faire pur quei issit bref vel causam nobis significes. Le viconte retourna

<sup>1</sup> crey γγ, λ.    <sup>2</sup> γγ, λ omit.    <sup>3</sup> dire λ.    <sup>4-4</sup> Uncore demandoms jugement de lawouerie λ.    <sup>5</sup> arane γγ; aresone λ.    <sup>6</sup> qar γγ, λ.    <sup>7</sup> λ adds ple.    <sup>8-9</sup> de nul trespas aresone λ.    <sup>9</sup> transuers γγ.    <sup>10-10</sup> λ omits.    <sup>11-12</sup> de traverser a ceti bref λ.    <sup>12</sup> γγ omits.    <sup>13-13</sup> compler diverse trespas et awouer λ.    <sup>14</sup> le λ.    <sup>15</sup> λ omits.    <sup>16</sup> STANTON λ.    <sup>17</sup> affermer λ.    <sup>18</sup> Reported by δ only.

*Passeley.* I say that we should be allowed, since the Abbot was both judge and party.

*Malmerthorpe.* He could have lawfully made another do it ; why, then, should he not do it himself in respect of his own tenant in his own court ?

SPIGURNEL J. Notwithstanding all that you have said, the avowry seems good enough ; therefore say something further.

*Passeley.* We tell you again that the Abbot ought not to be admitted to such an avowry, for though he says that Dionysia confessed the trespass and prayed taxation he does not say with what trespass she was charged nor what trespass she confessed nor in respect of what she prayed taxation.

*Malmerthorpe.* We need no more tell you that than we need tell you what trespass she committed, for it all relates to the same [plea], and even if we should say that she admitted such or such a trespass or was charged with such or such an one, the previous argument shows that you will be no more received to traverse the one allegation than the other.

*Passeley.* If you were to say that we were charged with a certain specified trespass we should be received to say that we had not been charged with such trespass.

*Friskenev.* Again [I say] that he would not be allowed to make such a traverse.

*Passeley.* In your avowry you said that the complainant confessed divers trespasses, and you avowed by a single execution of judgment for several trespasses, whereas the common law does not allow a man to have one judgment in respect of several trespasses, but there must be a several judgment for each trespass ; and therefore this avowry is bad.

*Cambridge.* If we were pleading the judgment here we should have enough to say to you ; but we need not do that now, for you can have your recovery by other means.

STAUNTON J. If you have given an illegal judgment in your court do you suppose that we are going to give another here to enforce yours ? No etc.

#### ANON. v. ANON.

Robert was distrained by one Alexander and brought his *replegiare*. Alexander claimed ownership and the Sheriff therefore could not make delivery ; and so the writ *vel causam nobis signifikes* was issued. The Sheriff made return that Alexander asserted ownership, and a writ



qil clama proprete pur quey issit bref a enquire de la proprete et si la proprete seit a Roberd qil face la deliuerance. Le viconte retourna qe les auers furent a Roberd pour le pleintif conta conte acordant a son bref.

*Pas.* en dreit del despit fait al Roy defendoms les paroles mes en droit de la persone Roberd nous vous dioms qil ne deit estre ressu car il est nostre vilein et seisi sumes et fumes le iour de la prise faite.

*Mutford.* nous entendoms qe vous ne serrez pas resceu de nous de reboter par excepciion de villenage de puis qe troue fut par verdit denqueste la proprete estre a Roberd pur quei la deliuerance fut fait sanz nul debat jugement.

HENGHAM. Cele enqueste ne fut nient pris en court qe porte record pur quei respondez uncore.

*Muttford.* nient seisi et alii in contrarium.

## RES IUDICATA.

NOTA.<sup>1</sup>

<sup>2</sup>Homme qe veut seure proces hors des roules par excepciion<sup>3</sup> *rei iudicate* il ly<sup>4</sup> covent avoir bille hors des roules le seneschal enceleys al chauncerie et puis bref de la chauncerie enceleiy *de rotulis scrutandis* en tresorie qe le tresorer face venir les roules en court a tezmoyner.<sup>5</sup>

## SCIRE FACIAS.

BREUHOUSE v. HOUTONE.<sup>6</sup>I.<sup>7</sup>

Scire facias.

Maud<sup>8</sup> qi fust la femme Willem de Breuouse<sup>9</sup> porta le scire facias vers Jon de Houtone a saver mounstrer<sup>10</sup> sil sache rien dire<sup>11</sup> par quei execution ne se doit fere du jugement done entre mesme ceste M.<sup>12</sup> et Jon <sup>10</sup>de Houtone<sup>11</sup> piere lavantdit Jon etc. devant justices en Baunk <sup>13</sup>et saches qe J. de H. dit qil ne deuerait respondre saunz ceo qil ne fut garni par bref le Roy auxi com deuerait deuant Justices en Bank.

*Wesc.* il nestut pas mes il suffit dauer precepte sil seit denzeyne et vous estes denzeyne pur quei vous estes assez garni.

*Malm.* vous ne deuez estre de meillour condicion qe Justices en Bank.

<sup>1</sup> Note from aa and β. Text from β corrected by and collated with aa.  
<sup>2</sup> adds Nota. <sup>3</sup> excepciionem aa. <sup>4</sup> aa omits. <sup>5</sup> aa adds etc.

<sup>6</sup> Reported by γ, δ, ε, η, θ, λ (twice). <sup>7</sup> Text of (I) from γ collated with δ, ε, λ.

<sup>8</sup> Marie δ; Margareta λ. <sup>9</sup> B. δ; Brewose ε; Breus λ. <sup>10</sup> mon ε.

<sup>10-11</sup> δ omits. <sup>12</sup> Marie ε. <sup>13-1</sup> (on next page) from δ; omitted by γ, ε, and λ.

was therefore issued for an inquest as to the ownership; and, if it should be found to be in Robert, the Sheriff was directed to make deliverance to him. The Sheriff returned that the cattle were Robert's; [and *Mutford*], for the plaintiff, counted in accordance with the writ.

*Passeley*. As touching the alleged contempt of the King we deny the words [of the count], but in respect of Robert himself we tell you that he ought not to be received, for he is our villein, and we are seised of him and were seised on the day the distress was made.

*Mutford*. We submit that you will not be admitted to rebut us by an exception of villeinage since it has been found by the verdict of the inquest that the property was in Robert, and deliverance was thereupon made to him without any hesitation. Judgment.

HENGHAM C.J. That inquest was not taken in a court of record. Therefore answer over.

*Mutford*. Not seised. And the other side joined issue.

## RES IUDICATA.

### NOTE.

He that will sue for the production of the rolls upon an exception of *res iudicata* must have a bill out of the steward's rolls sealed in the chancery, and then he must get a writ *de rotulis scrutandis* sealed in the treasury, for the treasurer causes the rolls to be brought into court in evidence.

## SCIRE FACIAS.

### BRUCE *v.* HORTON.

#### I.

Maud that was wife of William Bruce brought the *scire facias* Scire facias. against John of Horton calling upon him to show whether he had aught to say why execution should not be done of the judgment given between this same Maud and John of Horton, father of the aforesaid John etc. before the Justices in Bank; and note that John of Horton said that he ought not to answer unless he had notice by a writ from the King as was the rule before the Justices in Bank.

*Westcote*. That is not so. If a man be within the jurisdiction it is sufficient if he have notice by precept.<sup>1</sup> You are within the jurisdiction, and therefore you have had sufficient notice.

*Malmerthorpe*. You ought not to be in a better position than the Justices in Bank.

<sup>1</sup> A precept was issued by the Justices on behalf of the King (*ex parte domini regis tibi praecepimus*).

SPIG. vous dites talent nous pomes fere plusours choses autres qil ne pount pur quei respondez etc.<sup>1</sup>

*Malm.* sire Jon vous dit qe J. son pierre et Isabelle sa miere pur chaserent ceus tenementz joyntement a eux et a lour heirs de Willem de Breuouse<sup>2</sup> et vous dit qe Isabelle survesqi <sup>3</sup>Jon le<sup>3</sup> pierre et <sup>4</sup>vous dit qe<sup>4</sup> il est einz <sup>5</sup>en son heritage<sup>5</sup> com fitz et heir sa miere et nentendoms mie qe execution deive fere vers lui del heritage sa miere par nul jugement qe se fist entre lavaunt dit M. et son pierre a qel jugement <sup>6</sup>sa miere<sup>6</sup> ne fust mie partie.

*Westcote* laccioun la dame<sup>7</sup> fust foundu sur un droit de eyne<sup>8</sup> temps acru qe lestat vostre miere<sup>9</sup> par qey tut fust vostre miere en vye <sup>10</sup>et einz<sup>10</sup> ele ne pout cest execucion desturber et vous ne serrez de meilour condicioun par qey etc.

*Malm.* sire qant M. porta cest bref vers Jon de Houtone il fist defaute apres defaute sur queles jugement passa en qel cas la femme Jon poeit aver le cui in vita a qel bref<sup>11</sup> le demandant pledereit son primer droit solom le primer bref etc. mes ore ne peut nient son heir aver tiel avantage par le cui in vita qar il ne gist nient pur lui qant tenementz sount perduz par defaute etc. ut supra mes gist en cas de alienacioun par qey il semble a nous si ele ne voile pleder ove nous son droit solom le bref qe ele porta vers nostre pierre qe del heritage nostre miere ne<sup>12</sup> deive executioun vers nous aver par vertu dun<sup>13</sup> jugement etc. ut supra.

*Westcote* la femme ne ust mie ew le cui in vita en ceo cas qar ele ne fust mie en cas de statut qar statut le donne le cui in vita qaunt ele est nome en le bref qar donques fet statut mencioun qe le demandant doit mostrer son droit <sup>14</sup>solom la tenure<sup>15</sup> del bref qele<sup>16</sup> purchacea sur son baroun et lui<sup>17</sup> mes sa miere ne fust nient nome en cesti bref par qei etc.

SPIGURNEL <sup>18</sup>ad aliam diem<sup>18</sup> pur ceo qe nous veoms qe le bref fust porte soulement vers J. de Houtone et la femme ne vynt pas avant jugement rendu etc. et nous veoms qe ceste execucion<sup>19</sup> nest mie desheritaunce a Jon et qaunt qe vous pledez si est a chacer M. de repleder son primer plee sur qel ele ad jugement et a ceo reson <sup>20</sup>ne se<sup>20</sup> acorde point<sup>21</sup> par qey <sup>22</sup>agarde la curt<sup>23</sup> qe ele eit executioun etc.

## II.<sup>24</sup>

Margerie qe fut la femme Willem de Breus fit venir le record hors de la tresorie dun bref de dower qele meme porta vers Jon de Houtone

<sup>1</sup> See note 13 on previous page. <sup>2</sup> B. δ; Breus λ. <sup>3-3</sup> son δ; soun λ. <sup>4-4</sup> added from ε. <sup>5-5</sup> added from ε. <sup>6-6</sup> la femme δ. <sup>7</sup> λ adds ne. <sup>8</sup> eynz ne ε. <sup>9</sup> λ adds ne put. <sup>10-10</sup> δ omits. <sup>11</sup> pley ε. <sup>12</sup> added from ε. <sup>13</sup> de cel λ. <sup>14-17</sup> λ omits. <sup>15</sup> nature δ. <sup>16</sup> qil primes δ, ε. <sup>18-18</sup> λ omits. <sup>19</sup> excepcion δ. <sup>20-20</sup> λ omits. <sup>21</sup> λ omits. <sup>22-23</sup> from ε; etc. γ. <sup>24</sup> Text of (II) from second report in λ.



SPIGURNEL J. You are talking idly. We can do many things which they cannot do. And so answer.

*Malmerthorpe.* Sir, John tells you that John, his father, and Isabel, his mother, purchased jointly these tenements from William Bruce to themselves and their heirs; and he tells you that Isabel survived John, his father; and he tells you that he is in possession of his heritage as his mother's son and heir; and we submit that no execution of a judgment that was given between the aforementioned Maud and his father, touching the heritage of his mother, to which judgment his mother was not privy, should be had against him.

*Westcote.* The lady's action was based upon a right accruing to her before your mother acquired her estate; and, therefore, even though your mother were now alive and in possession, she could not delay this execution, and you are in no better position. Wherefore etc.

*Malmerthorpe.* Sir, when Maud brought this writ against John of Horton he made default after default, and judgment was given by reason of such defaults. In these circumstances John's wife might have taken out a *cui in vita*; and to such writ the [present] demandant would have pleaded her prior right in accordance with the original writ etc.; but her heir cannot have the advantage of a *cui in vita*, for it does not lie for him when tenements are lost by default etc. *as above*, but lies [only] in the case of alienation; and therefore we submit that if Maud will not prove her right against us as laid by her in the writ which she brought against our father she ought not to have execution against us of the heritage of our mother in virtue of a judgment etc. *as above*.

*Westcote.* The wife would not have had the *cui in vita* in the circumstances, for she did not come within the statute; for the statute grants the *cui in vita* [only] in the case where the wife is named in the writ; for the statute specifically says that the demandant 'must show his right according to the form of the writ that he purchased before against the husband and the wife.' But his mother was not named in the writ, wherefore etc.<sup>1</sup>

SPIGURNEL J., upon another day: As we notice that the writ was brought against John of Horton alone and that the wife did not appear before judgment given, and that this execution does not go to the disherison of John, and that the object of the argument is to drive Maud to replead her former plea, which is not accordant with reason, the Court consequently gives judgment that Maud have execution etc.

## II.

Margery that was wife of William Bruce caused to be brought from the Treasury before the Justices in Eyre in the County of Kent the

<sup>1</sup> Statute of Westminster, II. cap. iii.

en que record jugement se fit pur li devant Sire Jon de Metigham etc. devant Justices Erranz en le conte de Kent et fut le bref par quel le record fut fet vener que le tresorer et le chamburleyn maunderent lour record a Justices Errantz etc. issint qil purrunt fere dreit as parties et fut le record tel que Margerie auoit recoueri par defaute apres defaute vers Jon de Houtone.

Margerie dit que un Pers et Jon le fitz Jon de Houtone furent tenanz des tenemenz de quez ele recoueri dower pur quei les Justices firent precept a visconte de garner Jon et Pers etc.

*Malm.* pur Jon demanda le oi du garnissement.

*SPIG.* il ni ad autre garnissement for que le precept.

*Malm.* sire vous veez bien coment Jon nest mie meme la persone vers qi ele recoueri et vous dit qil nentent point que de soun franctenement deieue respondre sanz bref estre ceo le recoueria ceo qil meme dit se fut en tens de lautre Roi pur quei il couent auer garnissement.

*Wesc.* en voucher homme ne auera mie forqe precept en Eire a visconte a moute plus fort en ceo cas.

*Malm.* vous ne poet estre de meilour condition que Justices ne sunt en bank et en ban couendreit il auer bref auxi par de sa.

*HERVI.* Justices de banc ne sunt mie en meme le conte auxi com nous sumes purquei responet.

*SPIG.* si en un voucher homme serra fet vener par precept a mout plus fort si qen teu cas tout fut celi qest garni deinz age il respondreit et pur ceo respondez.

*Ad alium diem.* Ele ne deit execucioun auer qar le record voet que ele recoueri vers Jon de Houtone la nous vous dioms que nous sumes entre apres la mort nostre mere Alice en ceuz tenemenz que mourut seisi en son demene com de fee com fitz et heir et vous dioms que un Willem de Breus enfeffa de memes ceuz tenemenz Jon de Houtone nostre pere et A. nostre mere a euz et a lour heirs et lour assignz par cete chartre et mit avant chartre que ceo tesmoigne et A. survesquit Jon etc. et issi mourut ele seisi etc. apres qi mort etc. jugement de sicom le jugement se fit vers Jon de Houtone si vous deuez execucioun auer.

*Pass.* nous prioms un execucioun de un jugement qi se fit pur li

record [of the proceedings] under a writ of dower which she brought against John of Horton, from which record it appeared that judgment was given in her favour before Sir John Metingham etc.; and the writ ordering the production of the record directed the Treasurer and Chamberlain to send their record to the Justices in Eyre etc. that they might do right to the parties; and the record recorded that Margery had recovered against John of Horton by reason of default after default.

Margery said that one Peter and John the son of John of Horton were tenants of the tenements in respect of which she had recovered dower; and the Justices thereupon directed the Sheriff to give notice to John and Peter etc.

*Malmerthorpe*, on behalf of John, prayed *oyer* of the notice.

SPIGURNEL J. There is no other notice than the precept.

*Malmerthorpe*. Sir, you see clearly that John is not the person against whom Margery recovered, and he tells you that he does not understand how he can be called upon to answer in respect of his freehold without a writ. And, further, the recovery she speaks of was got in the time of the late King, wherefore John ought to have notice.

*Westcote*. Even in case of voucher a man will get naught more in Eyre than a precept to the Sheriff, and in this matter he has much less claim to aught more.

*Malmerthorpe*. You cannot be in a stronger position than the Justices in Bank are in, and in Bank John would be entitled to have a writ; so here.

STAUNTON J. Justices in Bank are not in the same county [wherein the parties are resident] as we are. Therefore answer.

SPIGURNEL J. If a man may be brought here by precept in a matter of voucher, all the more obviously he may be brought in these present circumstances; and even though he that has such notice be within age, yet he must answer; and therefore do you answer.

Upon another day. Margery ought not to have execution, for the record says that she recovered against John of Horton; and we tell you that we entered, as son and heir, upon those tenements upon the death of Alice our mother, who died seised in her own demesne as of fee, and we tell you that one William Bruce enfeofed John of Horton, our father, and Alice, our mother, of those tenements, [to hold] to them and their heirs and assigns, by this charter—and he tendered a charter in proof—and Alice survived John etc. and consequently died seised etc., upon whose death etc. Judgment whether you are entitled to execution, seeing that the judgment was given against John of Horton.

*Passeley*. We pray execution of a judgment which was made



meme et il est garni et rien ne mustret qe deneie cel execucioun jugement.

*Frisk.* conuset donqe qe le fet est tel auxi com nous avoms dit et demouroms en jugement.

*Wesc.* tout ut A. venu meme apres jugement rendu ele neut mie targe cest execucioun einz covendreit qe ele ut attendu tanqe la mort son baron et ut este a sa accion de sicom ele ne ut mie targe ne vous qe clamet par mi li qe ne deuert de meillour condicion estre quia non nominabatur in brevi post iudicium redditum non rescipient mulierem.

*SPIG.* si vous volez demourer en jugement vous covent estre en certain pur qei si grantez le fet tel etc. donqe poez vous demourer en jugement.

*Pass.* nous ne pooms granter mes qe la court agrante ceo qe ele voudra de pus qe ele par mi tel clem ne put le jugement targer jugement.

*Hert.* tout fusez vous einz en ceuz tenemenz des quez vous volez auer execucioun et uncore auereit Jon de Houtone le mordancestre vers vous de la seisine sa mere qei vaudreit donqe qe vous usset execucioun et issint par un jugement defere un autre.

*Pass.* vostre resoun prove qe nous averoms execucioun car tout eioms nous execucioun ceo nest mie meschier qar par vostre dit demene il recouera par le mordancestre.

*HERUI.* si vous entratez par ceu jugement et A. fut en vie et Jon mort ele auereit lassise vers vous.

*SPIG.* asset est conu qe le fet est tel com il vous dit qe Willem de B. dona ut supra ore [m]estre qe vous conuset le qel le don se fit deuant les esposailles ou apres.

*Frisq.* nous ne devoms granter etc. mes vous dioms ut supra Jugement.

*HERUI.* nest mie mout grant fetes de laccion qe le dreit de dower ne put nent estre plede en ceo Scire facias gele dit qe le jugement se fit pur li qi qe eit dreit ou tort.

*Hert.* dit In principio placiti qe J. fut tenant de lentier de tenemenz a terme de viij. aunz et voleit sauer si Jon li vousit garrantir qe ceo fut de son les et dit qe noun etc.

touching John's inheritance,<sup>1</sup> and he has had notice and shows naught in avoidance of this execution.

*Friskenev.* Admit that the deed is as we have said, and we will abide judgment.

*Westcote.* Even though Alice herself had come after judgment given she could not have delayed this execution, for the Justices will not receive, after judgment, a wife not named in the writ. She would have to await her husband's death, when right of action [to have the judgment annulled] would accrue to her. And you, who claim through Alice, cannot be in a better position than Alice was.

SPIGURNEL J. If you want to abide judgment you must plead certainly. If, therefore, you admit that the deed etc. you can then abide judgment.

*Passeley.* We cannot admit it, but the court may admit what seems good to it. Judgment whether by such plea as she puts forward she can delay [execution of the] judgment.

*Hartlepool.* Even though you were in possession of these tenements of which you want to have execution John of Horton might still have the mortdancestor against you upon the seisin of his mother. What would it avail you then to get execution and so get only one judgment which another would upset?

*Passeley.* Your argument shows that we ought to have execution, for your own assertion that John would recover by mortdancestor shows that no wrong would be done thereby.

STAUNTON J. If you entered by our judgment, and Alice were alive and John were dead, Alice would have the assize against you.

SPIGURNEL J. It is sufficiently admitted that the deed is as stated, that William of B. gave *as above*. You must now admit either that it was made before marriage or after.

*Friskenev.* We cannot be called upon to admit etc. but we tell you *as above*. Judgment.

STAUNTON J. It is not of much importance so far as the action is concerned, for the right to dower cannot be pleaded in this *scire facias*, for Margery says that judgment was given for her, whoever was right or whoever was wrong.

*Hartlepool* said that [Margery] at the beginning of the hearing said that J. was tenant of the whole of the tenements for a term of eight years, and he wished to know whether John would warrant her as tenant by his lease, and he said that he would not.

<sup>1</sup> The text is obscure here and elsewhere, but the translation probably gives its meaning.

HERUI. tout voleit il garrantir a peine si la court le resseuereit.

*Frisk.* Nous sumes entre com heir nostre mere qe mourut seisi demandoms jugement si par nul jugement a queu jugement nostre mere qi heir nous sumes ne fut pas partie deuoms de soun heritage estre ouste.

*Pass.* Et nous jugement de sicom vous ne poez estre de meillour condicion a cet execucioun targer qe ne serreit vostre mere qi estat vous clamet et ele ceste execucioun ne put targer jugement si vous le puiset targer.

### III.<sup>1</sup>

Marie de Brews porta un Scire facias vers un W. de B. qi fut garni par precept.

*Malm.* nous ne fumes pas partie a primer jugement<sup>2</sup> et depus<sup>3</sup> qe nous sumes pas garni par bref jugement<sup>4</sup> si de nostre franctenement devons respondre.

*SPIG.* vous estes en Eyre ou<sup>5</sup> suffit de estre garni par precept de tenemenz en meme le conte com en cas de vocher <sup>6</sup>a garantir<sup>7</sup> qe vindrent en Eyre par precept <sup>8</sup>et vendit par precept<sup>9</sup> sil seit somonable en meme le conte<sup>10</sup> et si il fut en bank il serreit somons par bref et estre ceo en scire facias vous naueret pas vocher ne altre solempnete de play. Et tot fuoit<sup>11</sup> vous entre<sup>12</sup> ces tenemenz apres la mort vostre ancestre en cel ple vous ne auereit<sup>13</sup> pas vostre age tot deuiaist vostre pere seisi pur quei si vous eiet<sup>14</sup> rien a targer execucion dites.<sup>15</sup>

*Fris.* nous sumes garni com estranger et ne mie com heir Robert qe dust estre partie a jugement dont cet scire facias est issu jugement si sanz ceo qe nous seoms nome heir en le garnisement deuoms etc.

*SPIG.* vous estes heir Robert et garni com tenant responet.

*Fris.* memes ceus tenemenz furent acun tens en la seisine Johan de Brewes qi hors de sa seisine lez dona a Robert et a Elionore<sup>16</sup> sa feme et a lour heirs et lour assignes par chartre qe fut mis avant etc. Elionore<sup>16</sup> suruesqui et morust seisi en son demene com de fee apres qi mort William entra com fiz et heir Elionore et est einz jugement si vers ly deuet execucion auer.

*Wescote.* vous ne poet dedire qe Marie recouera vers Robert par jugement de quel jugement cete bref est issu a quel tens si Marie ust suy

<sup>1</sup> Text of (III) from  $\eta$  collated with  $\theta$ .

<sup>2</sup> inquest  $\theta$ . <sup>3</sup> del heure  $\theta$ .

<sup>4</sup> added from  $\theta$ ;  $\eta$  omits.

<sup>5</sup> from  $\theta$ ;  $\eta$  has et ceo.

<sup>6-7</sup> added from  $\theta$ ;

$\eta$  omits.

<sup>8-9</sup> These words seem to be a superfluous repetition and are omitted by  $\theta$ .

<sup>10</sup>  $\theta$  adds com in cas de vouchier a garantir qe vendra.

<sup>11</sup> fussez  $\theta$ .

<sup>12</sup>  $\theta$  adds en.

<sup>13</sup> auerez  $\theta$ .

<sup>14</sup> eis  $\theta$ .

<sup>15</sup>  $\theta$  adds etc.

<sup>16</sup> from  $\theta$ ; E.  $\eta$ .



STAUNTON J. The Court would scarcely have received him to warrant even if he had been willing.

*Friskeney.* We are in possession as heir of our mother who died seised. We ask judgment whether we can be ejected from the heritage of our mother by any judgment to which our mother, whose heir we are, was not party.

*Passeley.* And we ask judgment whether you can delay this execution, since you cannot be in a better position to do so than your mother, whose estate you claim, was ; and she could not delay the execution.

## III.

Mary Bruce brought a *scire facias* against one W. of B. who was served with notice by precept.

*Malmerthorpe.* We were not party to the previous judgment, and therefore [we ask] judgment whether we ought to answer of our freehold, seeing that we have not been summoned by writ.

SPIGURNEL J. You are in Eyre where notice by precept to any one within the county is sufficient, just as in Eyre in a case of voucher to warranty the vouchee must, if he be summonable within the county, appear to a precept. If the matter were in Bank he would be summoned by writ. Further than that, you will not get a voucher or other formality in pleading to a *scire facias*. And under this writ you will not get your age allowed even though your father died seised and you entered these tenements upon your father's death ; so, if you have aught to say in delay of execution, say it.

*Friskeney.* We have notice as a stranger and not as Robert's heir ; and Robert's heir ought to be party to the judgment to be given upon this *scire facias*. Judgment whether we ought etc. without our being named as heir in the notice.

SPIGURNEL J. You are Robert's heir, and you have received notice as tenant. Answer.

*Friskeney.* These same tenements were at one time in the seisin of John Bruce, who granted them out of his seisin to Robert and to Eleanor his wife and to their heirs and assigns by a charter—which was tendered etc. Eleanor was the survivor and died seised in her own demesne as of fee. Upon Eleanor's death William entered as her son and heir and is in possession. Judgment whether against him you can get execution.

*Westcote.* You cannot deny that Mary recovered from Robert by a judgment which this writ is brought to enforce. If, at the time of the judgment, Mary had sued for execution, Eleanor, your mother,

execucion Elionore vostre mere ne poit auer desturbe etc. et par consequens ne vous qi estes son heir.

*Fris.* ne sereit pas merueile qar ele fut a cel tens couert de baron<sup>1</sup> mes si issi fut qe ele ust sui execucion vers Elienore apres le deces Robert si ele peit auer prove qe ceus tenemenz furent son dreit execucion ne ust pas este agarde <sup>2</sup>vers Elionore<sup>3</sup> nient plus vers William qi est einz com heir Elianore.

*Frisk.* <sup>4</sup>estre ceo<sup>5</sup> si Elianore ust este altre qe sa feme si execucion se ust fet par le jugement vers Robert ele ust recouere par assise etc. pur ceo qe Robert ne poit perdre altri dreit dont depus<sup>6</sup> qe al tens de jugement Elianore fut seisi com de son dreit et suruesqi Robert et de tel estat morust seisi et William einz com en<sup>7</sup> son dreit et estre ceo cel<sup>8</sup> recouer fet vers son baron de dreit la feme cele recouer ne lie pas la feme for qe en la vie son baron et apres son deces la feme auera son recouer a defere le jugement et reauer sa seisine dont depus<sup>9</sup> qe la feme ne fut unqes hors par le jugement fet vers Robert einz suruesqi et de cel estat morust<sup>10</sup> seisi et Willem entra com fiz jugement si execucion deuert auer.

*Pass.* il pert par vostre dit qe la jugement qe passa pur Marie dont ele sut execucion est de <sup>11</sup>plus haut<sup>12</sup> dreit qe lestat Elianore qi purchasa<sup>13</sup> de nostre baron pus les esposailles dont nentendoms pas qe de vostre recouer de plus haut puisset<sup>14</sup> execucion targer.

*Fris.* vous deistes bien si vous vssez<sup>15</sup> recouere vers tenant qi poet perdre mes Elianore qi auoit joint estat ou son baron ne fut pas nome en le bref ne en jugement pur quei etc.

#### NOTA.<sup>16</sup>

Nota Si un homme port un scire facias vers un enfant deinz age assauer etc. sil sache rienz dire pur quei execucion ne se deit fere <sup>17</sup>de un jugement<sup>17</sup> qe fut entre son pere qi heir il est etc. tut die lenfant <sup>18</sup>deinz age<sup>18</sup> qe son pere morust seisi etc. et il est einz com fitz et heir le plee ne targerà my par my son nounage ne nient plus qe par le nounage vn estrange qi est eynz etc.

<sup>1</sup> Robert *θ*.      <sup>2-3</sup> *from θ; η omits.*      <sup>4-5</sup> *from θ; η omits.*      <sup>6</sup> del  
 heure *θ*.      <sup>7</sup> de *θ*.      <sup>8</sup> le *θ*.      <sup>9</sup> del heure *θ*.      <sup>10</sup> mort *θ*.      <sup>11-12</sup> plus  
 haust *θ*.      <sup>13</sup> purchast *θ*.      <sup>14</sup> ussez *θ*.      <sup>15</sup> uszes *θ*.      <sup>16</sup> Note from *δ*  
 and *ε*. Text from *δ* collated with *ε*.      <sup>17-17</sup> *ε omits.*      <sup>18-18</sup> *ε omits.*

could not have prevented her getting it ; neither, consequently, can you who are her heir.

*Friskeney.* That is explained by the fact that Eleanor was then *coverte* with a husband ; but if Mary had sued for execution against Eleanor subsequently to Robert's death and had been able to show that these tenements were her right, execution would not have been granted against Eleanor ; nor any the more against William who is in possession as Eleanor's heir.

*Friskeney.* And further, if Eleanor had not been Robert's wife and execution had been got by judgment against Robert, she could have recovered by assize etc., for Robert could not lose the right of another. Since, then, Eleanor was seised as of her own right at the time of the judgment and survived Robert and died seised of such estate and William is now in possession in right of her, and since, to go further, this recovery got against the husband of the right of his wife is only binding on the wife during her husband's life, and the wife, after her husband's death, can have the judgment annulled and can recover possession, for she was never dispossessed by the judgment given against Robert, but survived Robert and died seised of her estate, when William entered as her son, we ask judgment whether you ought to have execution.

*Passeley.* It appears clear from your own statement that the judgment given in favour of Mary, of which she now sues execution, would have affected an estate of even higher nature than that which Eleanor had by purchase from her husband subsequently to her marriage ; and therefore we do not see how by your recovery [of a lower estate] you could delay execution upon a higher one.

*Friskeney.* If you had recovered against a tenant who could lose [the whole estate] you would be right, but Eleanor, who had a joint estate with her husband, was not named in the writ nor in the judgment. Wherefore etc.

#### NOTE.

Note that if a man bring a *scire facias* against an infant within age, to wit, one calling upon him to show cause, if he can, why execution should not be had of a judgment given between his father whose heir he is etc., and if the infant within age say that his father died seised etc. and that he himself is in possession as his father's son and heir, yet the suit for execution shall not be delayed by reason of his nonage any more than it would be by the nonage of a stranger who was in possession.



## VARIANCE.

ANON. v. ANON.<sup>1</sup>

Questi sunt nobis R. de P. Johan William et Valentine ses freres et pus dit en le bref et ideo tibi precipimus quod si predicti R. de P. J. et W. ses freres et Valentine securum etc.

*Toudebi.* Jugement du bref qar al comencement du bref il fesoint Valentine un des frers et apres en le bref fount il Valentine estrange la ou il dient qe J. et W. ses freres et Valentine jugement etc.

SPIGURNEL. Le predicti ad sa relacion auxi bien a Valentine com as autres pur quei il est a entendre qil est celly Valentine qest nome al comencement du bref pur quei nous agardoms le bref bon.<sup>2</sup>

NOTA.<sup>3</sup>

Nota si un homme porte son bref vers un Johan et le defendant [fet] excepcion qil ad a noun William cest bon replicacion a dire qil est conu par tieu noun prest delauerer mes si homme en counte countant fet resort de un William ou descent et le defendant [fet] excepcion qe celly de qi il auoit fait resort ou descent out a noun Johan prest etc. il ne serra pas resceu a replier qe conu par tiel noun prest etc. apres sa mort eynz couient qil die attrenchant qil out a noun William prest etc.

## VEWE.

NOTA.<sup>4</sup>

View.

Quant homme deit fere la vewe il nest my mester qil face la vewe de chescun acre qil suffit de fere la vewe en un champ et dire de la terre en ceste champ ieo demande taunt et en tiel champ taunt etc.

<sup>1</sup> Reported by  $\delta$  only. <sup>2</sup> For other cases where exception of variance was taken see Vol. II. pp. 85 and 86. The material part of the record touching the alleged variance in the proceedings in the writ of right (Vol. II. p. 85) brought by Robert (whose name according to the Roll was in fact Thomas Chitche) against Alice [Denery] is as follows:—Alicia venit et petit auditum breuis originalis et Ponē quibus auditis compertum est quod in le pone inseritur summonite etc. predictam Aliciam quod tunc sit etc. prefato Thome inde responsurus que quidem diccio responsurus non habet relacionem ad ipsam Aliciam etc. unde petit iudicium si debeat ad hoc breue respondere et predictus Thomas non potest hoc dedicere. Alice, consequently, goes away *sine die*, while Thomas takes naught by his writ and is in mercy *pro falso clamore* (E.R. m. 29d.). <sup>3</sup> Note from  $\delta$ . <sup>4</sup> Note from  $\delta$ .

## VARIANCE.

## ANON. v. ANON.

'R. of P., John, William and Valentine, his brothers, have complained to us.' And, subsequently, the writ ran 'and so we charge you that if the aforesaid R. of P., J., and W., his brothers, and Valentine, give you security etc.

*Toudeby.* Judgment of the writ ; for at the beginning of the writ they make Valentine one of the brothers, and, later on in the writ, when they say 'J. and W., his brothers and Valentine,' they make Valentine a stranger. Judgment etc.

SPIGURNEL J. The description 'aforesaid' relates as well to Valentine as to the others, and so we are to understand that this Valentine is the same as the one named at the beginning of the writ ; and therefore we rule the writ good.

## NOTE.

Note that if a man bring his writ against one John, and the defendant take exception that his name is William, it is a good replication to say that he is known by the name of John : ready to aver it. But if the complainant in counting his count make resort to or descent from one William and the defendant take the exception that he to or from whom he has made resort or descent was called John ; ready etc. ; the complainant shall not be received to reply that he was known by that name, ready etc., if he be dead, but he must assert positively that his name was William ; ready etc.

## VIEW.

## NOTE.

When one has to make a view he need not make view of each single acre. It is sufficient if he make view of a field and say in respect of the land in that field 'I demand so much, and in such a field so much etc.' View.

## NOTES.

I.<sup>1</sup>

*Nota* par les justices la ou leyre feust asis as eutaves de Seint Jon et acuns pleez pendant en la court le roi de mesme le counte furent ajornez taunt qe a les eutaves de Seint Michel avant leyre qe non obstante cel ajornement avoient ceus jour en eyre par la comune crie aussi bien com ceus qi ne furent mie ajornez.

II.<sup>2</sup>A.<sup>3</sup>

*Nota* qe une femme myst auant bille de plee qe fut pendant en bancke le Roy deuant Sire Roger Brabazon et voleit auer plede <sup>4</sup>son plee<sup>5</sup> en Eyre e SPIGURNEL dit qil nauoynt <sup>6</sup>mye power a<sup>7</sup> pleder lez plez pendans en bancke le Roy et pursuetz<sup>8</sup> auant vostre breve et vostre plee la.<sup>9</sup>

B.<sup>10</sup>

*Nota* qe des pleez pendauntz deuant Sire Roger Brabazon en Baunk le Roy nul record ne put estre somons deuaunt Justices en Eyre.

C.<sup>11</sup>

*Nota* qe les brefs qe sount devant le roi videlicet devant sire R. de Brabasoun etc. ne vendront james en Eyre.

D.<sup>12</sup>

Et *Nota* qe tous les ples qe son<sup>13</sup> deuant le Roy demorent ileuques <sup>14</sup>deuant le Roy<sup>15</sup> sanz venir en Eyre par comune Somons de Eyre. <sup>16</sup>Secus est in communi Banco.<sup>17</sup>

III.<sup>18</sup>A.<sup>19</sup>

*Nota* qe totes les Assises qe passent en Eyre qe la [*sic*] Cheife Justice put granter latent per son bref demene et en mesme le manere put le Cheife Justice grant son bref de disseisine fet durant leyre.

<sup>1</sup> Note from  $\gamma$ .

<sup>2</sup> Note from  $a$ ,  $\gamma$ ,  $\gamma\gamma$ ,  $\epsilon$ ,  $\theta$ ,  $\eta$ , and  $\kappa$ .

<sup>3</sup> Text of A

from  $\gamma\gamma$  collated with  $\kappa$ .

<sup>4-5</sup>  $cy \kappa$ .

<sup>6-7</sup> un power de  $\kappa$ .

<sup>8</sup> pur ceo

suez  $\kappa$ .

<sup>9</sup>  $\kappa$  omits la.

<sup>10</sup> Text of B from  $a$ .

<sup>11</sup> Text of C from  $\gamma$ .

<sup>12</sup> Text of D from  $\eta$  collated with  $\theta$ .

<sup>13</sup> pendent  $\theta$ .

<sup>14-15</sup>  $\theta$  omits.

<sup>16-17</sup> added from  $\theta$ ;  $\eta$  omits.

<sup>18</sup> Note from  $\theta$  and  $\kappa$ .

<sup>19</sup> Text of A from  $\theta$ .



## NOTES.

## I.

Note that it was ruled by the Justices that whereas the Eyre was summoned for the octaves of St. John and certain pleas of the same county that were pending in the King's Court were adjourned, previously to the Eyre, to the octaves of St. Michael, yet, notwithstanding such adjournment, these pleas had their day in Eyre by the common cry equally with those to which no day had been given.

## II.

## (A.)

Note that a woman tendered a bill of a plea that was pending in the King's Bench before Sir Roger Brabazon, and wanted to plead her plea in Eyre; but SPIGURNEL J. said that they had no authority to hear pleas pending in the King's Bench; 'and prosecute your writ and your plea there.'

## (B.)

Note that no record of pleas pending before Sir Roger Brabazon in the King's Bench can be brought before Justices in Eyre.

## (C.)

Note that writs which are before the King, that is to say before Sir Roger Brabazon etc., shall never be tried in Eyre.<sup>1</sup>

## (D.)

Note that all pleas entered before the King shall remain there before the King without coming to Eyre by the common summons of the Eyre. *Secus* with pleas in the common Bench.

## III.

## (A.)

Note that the Chief Justice<sup>2</sup> can, by his own writ, grant an attaint of any assize taken in the Eyre; and in the same way he can grant his writ in respect of any disseisin done during the Eyre.<sup>3</sup>

<sup>1</sup> See *Introduction*, p. xlv.    <sup>2</sup> *Sc.* of the Eyre.    <sup>3</sup> See *Introduction*, p. xlv.

B.<sup>1</sup>

Nota par SPIGURNEL qe sur assise ou juree qe passe en eyre la attaynt serra graunte si la partie pleintif vodra swyre par le chef justice saunz bref de la chauncerie.

IV.<sup>2</sup>

Nota en bref de possessioun com en <sup>3</sup>bref de <sup>3</sup>mortdancestor ael ou besael est bon response abatre le bref par <sup>4</sup>drein seisine a dire soulement un tiel fust plus tard seisi saunz dire qil aliena ou qil morust seisi et <sup>5</sup>racio<sup>6</sup> est<sup>7</sup> qe sil fust plus tard seisi homme avereit bref de sa seisine de droit ou dentre sur disseizine <sup>8</sup>sil fust disseisi et hoc<sup>8</sup> par *Pas. Westcote et Stonore.*

V.<sup>9</sup>

Homme ne peut mie prendre a la primer defaute en eyre qar la somons ne serra mie resonable mes de ij. jours<sup>10</sup> ou de iij. secundum <sup>11</sup>leur distance.<sup>11</sup>

VI.<sup>12</sup>

Nota.

En bref dentre ou dassise ou de possession tut soit il trove qe homme nasqit hors des esposailles sil porte <sup>13</sup>autre fez<sup>13</sup> bref tut dye homme qil ne doit estre receu com heir etc. qar autre foiz feust trove en court le roi qil nasqit hors desposailles ceo ne lui [doit] barrer par *Pass.* qar cele enqeste ou assise peut estre defete par ateinte secus est sil fust trove bastard en court Christiene car ceo lui serroit barre a touz jours qar ceo ne peut estre defait etc.

VII.<sup>14</sup>

Qaunt les Justices avoient sys en leire iiij. simaignes ils firent une crie qe touz ceus qi vodroient nul bref seure en leyre qil le feissent atacher entre cel jour et le Jeudy prochein apres la feste de la Nativite nostre Dame solom statut etc.

VIII.<sup>15</sup>

Nota qe ou heritage descent a ij. parceners com a un heir et lun porte soun bref saunz nomer lautre le tenaunt put abbatre le bref avaunt la

<sup>1</sup> Text of B from κ. <sup>2</sup> Note from γ, δ, ε. Text from γ collated with δ and ε. <sup>3-3</sup> from ε. <sup>4</sup> δ adds excepcion. <sup>5-7</sup> est la reison ε.  
<sup>6</sup> δ adds huius. <sup>8-8</sup> δ omits. <sup>9</sup> Note from γ and δ. Text from γ collated with δ. <sup>10</sup> δ omits. <sup>11-11</sup> etc. δ. <sup>12</sup> Note from γ and ε. Text from γ collated with ε. <sup>13-13</sup> altre foiz ε. <sup>14</sup> Note from γ and ε. Text from γ.  
<sup>15</sup> Note from α, αα, β and λ. Text from α collated with β: λ has no material variations.

## (B.)

Note that it was held by SPIGURNEL, J., that the Chief Justice might, by his own writ and without a writ from the Chancery, grant an attaind of any assize or jury taken during the Eyre if the plaintiff desired to sue for one. Note.

## IV.

Note that in a possessory writ, such as a writ of mortdancestor, ael or besael, where exception of latest seised is taken in abatement of the writ, it is sufficient to say simply that such an one was seised more lately, without saying that he alienated or that he died seised; and the reason is that if he were more lately seised a man might have a writ of right upon his seisin or of entry *sur disseisine* if he were disseised. By *Passeley*, *Westcote* and *Stonore*.

## V.

A plaintiff in Eyre shall not be entitled to take anything by reason of the defendant's default on the first day, for a summons to appear at a day's notice would not be reasonable. Two or three days' notice must be allowed, according to distance.<sup>1</sup>

## VI.

Though it be found in a writ of entry or in an assize or possessory writ that a man was born out of wedlock, yet, if at some later time it be objected against him that he ought not to be received as heir etc. because previously he had been found in the King's Court to have been born out of wedlock, he shall not be barred by such objection: so held by *Passeley* on the ground that such inquest or assize may be reversed by attaind. *Secus* if he had been found a bastard in Court Christian, for that finding would have barred him for ever, as it cannot be reversed etc.

## VII.

When the Justices had sat in Eyre for four weeks they made a proclamation that all who desired to prosecute any writs in the Eyre should deliver them between that day and the Thursday next following after the Nativity of Our Lady in accordance with the Statute<sup>2</sup> etc.

## VIII.

Note that where a heritage descends to two parceners as to a single heir, and one of these bring a writ without naming the other, the tenant

<sup>1</sup> This is a very free translation of the text, but probably conveys its meaning.  
<sup>2</sup> Statute of Westminster II. cap. x.



vewe demaunde pur ceo qe le parcener nest paas nomee en le bref mes apres la vewe nemie pur ceo qe parmi la vewe <sup>1</sup>si a<sup>2</sup> ad aferme la persone respounable.

IX.<sup>3</sup>

Nota qe nul excepcioun<sup>4</sup> sera entre en roule en eyre si noun cele qest peremptorie et visus endosse en le bref.

X.<sup>5</sup>

Nota ou drein seisine seit alegge il couent doner accioun de la seisine celui etc.

Nota <sup>6</sup>qe en la<sup>7</sup> excepcioun de drein seisi<sup>8</sup> couient doner accioun de <sup>9</sup>cele seisine<sup>10</sup> et assigner ou cele seisine deuynt com a dire qil aliena ou morust seisi etc. ou qil assigna en dowere etc. <sup>11</sup>Teste etc.<sup>12</sup> Toud.

XI.<sup>13</sup>

casus dassise de nouel disseisine.

La ou homme est feffe a tenir de chiefs seignourage du fee de certain tenement qe avaunt furent tenuz de meisme le seignur par les services de ij. s. des queux services il fut seisi par my la main le feffour si le seignur destreine pur les ij.s. et le feffe face la deliveraunce il puet user lassise kar auxi com fraunc tenement est acru a feoffe auxitost est il le tenaunt le chief Seignour. E si mesmes les tenemenz seont chargez a un estranger en x. li. par an des queux il a ad esti seisi par mi la main le feffour et puis aliene si le feffe face la deliverance il peut user lassise *quia res transit cum onere*. Et uterge casus patuit in itinere cencie etc.

XII.<sup>14</sup>

Si bille ne seit mys en court a pleis de corone criez la partie ne serra mye respoundu.

XIII.<sup>15</sup>

Nota si tenementz sont lesses a terme des auns qe tut tiegne il outre son terme il ne fait nul disseisine mes si le lessor ou son heire mette debat et le termor se disturbe il est de facto disseisior.

XIV.<sup>16</sup>

Nota.

Nota qe si homme allegge noun tenure de purpartie de la demaunde il dorra tenaunt dil remenaunt sil voille abatre le bref ou respoundra de

<sup>1-2</sup> il  $\beta$ . <sup>3</sup> Note from a, aa and  $\beta$ . Text from a collated with  $\beta$ .  
<sup>4</sup> assogne  $\beta$ . <sup>5</sup> Note from a, aa and  $\beta$ . Text from a collated with  $\beta$ . Marginal note from aa.  $\beta$  has the same with very slight variations. The note in a is: Excepcioun de drein seisi etc. <sup>6-7</sup> ceo la ou homme alegge  $\beta$ . <sup>8</sup>  $\beta$  adds il.  
<sup>9-10</sup> la seisine cely  $\beta$ . <sup>11-12</sup> par  $\beta$ . <sup>13</sup> Note from a, aa and  $\beta$ . Text from a, from which the others vary in spelling only. <sup>14</sup> Note from a and  $\beta$ . <sup>15</sup> Note from  $\beta$ . <sup>16</sup> Note from a.

may abate the writ before view demanded on the ground that the parcener is not named in the writ ; but, after view, he cannot do so, because by demanding view he has admitted that he ought to answer the writ.

## IX.

Note that no exception shall be entered in the roll in Eyre except it be a peremptory one and ' visus ' be endorsed on the writ.

## X.

Note that when the exception of latest seised is taken a seisin must be assigned that will enable the plaintiff to have action ; and the origin of such seisin must be explained by saying that he [in whom the plaintiff lays the latest seisin] alienated or died seised etc. or that he assigned by way of dower etc. This on the authority of *Toudeby*.

Note that where a later seisin is pleaded it must be so pleaded that the plaintiff may have action upon it.

## XI.

Where a man is enfeoffed to hold of the chief lord of the fee certain tenements which were formerly held of the same lord by the service of two shillings, of which service he was seised by the hand of the feoffor, then, if the lord distrain for the two shillings and the feoffee replevy, [the lord] can have the assize [of novel disseisin], for the feoffee becomes the tenant of the chief lord as soon as the freehold accrues to him. And if a stranger be granted an annual charge of ten pounds charged upon the same tenements, of which he has been seised by the hand of the feoffor, and the latter subsequently alienates, the stranger can have the assize if the feoffee replevies, for the land passes with the charge on it. And that this is so in both cases is laid down in the Eyre of Kent.

Where one may have an assize of novel disseisin.

## XII.

Unless a bill be received in court by the time the pleas of the Crown are called on, the complainant shall not be entitled to an answer.

## XIII.

Note that if tenements be leased for a term of years and the lessee hold them beyond his term he is guilty of no disseisin ; but if the lessor or his heir take action [for a recovery of the tenements] and the termor pleads against him, he becomes, *ipso facto*, a disseisor.

## XIV.

Note that if a man allege that he is not tenant of part of the demand he must, if he wish to abate the writ, either assign a tenant of that part,

Note.

ceo qil tient com a dire la ou il demaunde v. acres nous ne tenoms qe deus et de ceo etc.

XV.<sup>1</sup>

Nota.

Si un mes et. ij. acres de terre seient demande par un precipe et le tenant met auant chartre qe testefie qil est joint feffe de Mes oue un altre uers qi le bref nest pas porte tot prie le demandant proces de statut de coniunctim feoffatis le tenant ne respondist pas de .ij. acres de terre pur ceo qe qant il allega qe altre est ioint feffe ceo ensauoure un noun tenure en quel cas il responde mie de remenant si noun tenure seit allegge de partie de tenemenz demandez par un precipe.

XVI.<sup>2</sup>

Nota.

Nota non oportet ponere clamium in itinere quia<sup>3</sup> non regale qui eciam habet visum franciplegii per cartam Regis vel per prescripcionem temporis ea ratione possit habere emendas assise fracte panis et seruicie et ea ratione possit leuare pilloriam et tumbrellum etc.

XVII.<sup>4</sup>

Et nota qe dit fut ileuges par Sire Johan de Mutford qe si acun qe porte bref e seit vewe a la barre de Justice et sera trete de la barre sanz conge denparler il entrerent lour traxit et sil demande conge et isse denparler et ne reuigne ne pas la ne serra entre qe un non sute quam videbatur apud Norhamton coram Spigurnel.

XVIII.<sup>5</sup>

Un grant cape en bancke pur prendre le tenement en la Mayn le Roy en le counte de Kente auant le iour del grant cape retorne leyre fut somons en Kente pur quei bref ne put estre retorne en bancke le Record vynt en leyre et ceste chose fut troue en le record pur quei fut comande al viconte qe la terre deuerait estre pris etc. iour fut done a iij. iour.

XIX.<sup>6</sup>

<sup>7</sup>Nota qe<sup>8</sup> si bref seit porte vers abbe ou priour sanz nomer lui<sup>9</sup> par autre noun sil seit depose le bref<sup>10</sup> se estra<sup>11</sup> vers lautre qe est esleu mais

<sup>1</sup> Note from  $\eta$ .<sup>2</sup> Note from  $\eta$ .<sup>3</sup> This word seems to be misplaced.<sup>4</sup> Note from  $\eta$ .  
collated with  $\beta$ .<sup>5</sup> Note from  $\gamma\gamma$ .<sup>7-8</sup> supplied from  $\beta$ .<sup>6</sup> Note from  $aa$  and  $\beta$ . Text from  $aa$ <sup>9</sup>  $\beta$  omits.<sup>10-11</sup> estera  $\beta$ .



or answer in respect of the part of which he is tenant after the fashion following. 'Whereas the plaintiff demands five acres we hold but two; and of them we say etc.'

## XV.

If a messuage and two acres of land be demanded by a *precipe* and the tenant make *profert* of a charter testifying that he is jointly enfeoffed of the messuage with some other not joined with him in the writ, then the tenant shall not be called upon to answer in respect of the two acres, even though the demandant ask for process under the statute *De coniunctim feoffatis*,<sup>1</sup> for the tenant's allegation that another is jointly enfeoffed with him savours of a plea of non-tenure, and where non-tenure of a part of tenements demanded by a *precipe* is pleaded the defendant cannot be called upon to answer in respect of the rest. Note.

## XVI.

Note that one who already has view of frankpledge by the King's charter or by prescription of time need not claim any non-royal franchise in Eyre, for the grant of view of frankpledge entitles him to have correction of breach of assize of bread and beer and also to erect pillory and tumbrel etc. Note.

## XVII.

And note that SIR JOHN MUTFORD J. said there that if anyone bring a writ and be seen at the bar of the court and then withdraw himself from the bar without having obtained leave to imparl he must enter his *retraxit*; and, if he ask leave and go out to imparl and do not return, a non-suit shall be recorded against him: and this was done at Northampton before SPIGURNEL J.

## XVIII.

A grand *cape* was issued to seize a tenement in the county of Kent into the King's hand. Before the day for the return of the grand *cape* the Eyre was summoned in Kent, and the writ was consequently not returned into Bank. The record was remitted to the Eyre, and this matter was found recorded, and therefore the Sheriff was charged that the land must be seized etc., and a day was given, namely the third day afterwards.

## XIX.

Note that if a writ be brought against an Abbot or a Prior without naming him otherwise and he be removed from his office the writ shall

<sup>1</sup> 34 Edward I.

si le primer devie le bref se abatera quod non credo esse verum sil ne seit nome par nown de baptesme etc.

XX.<sup>1</sup>

Nota qen bref de dreit si deit homme se mettre en enqeste en lu de grant assise de tenemenz qe sunt tenuz en gawulginge et si deit le jugement estre done come sour la grant assise etc.

<sup>1</sup> Note from λ.

remain good against such other as shall be elected [in his room]; but if the first one die the writ will abate. <sup>1</sup>But I do not believe that this is so, unless he were named by his baptismal name etc.<sup>2</sup>

## XX.

Note that in a writ of right in respect of tenements which are held in gavelkind a man must put himself upon a jury instead of upon the grand assize, and judgment must be given as in a grand assize etc.<sup>3</sup>

<sup>1-2</sup> Here the reporter himself speaks.

<sup>3</sup> This special kind of assize was the right of tenants by gavelkind tenure. It was granted to them by a charter of Henry III. to the following effect:— 'The king has granted by his charter, for himself and his heirs, to the men of the county of Kent that as regards tenements which are held in gavelkind in the said county, grand assizes shall not be taken for the future by twelve knights as they are taken elsewhere in

our kingdom, but in the place of these grand assizes juries (*iurate*) shall be had of twelve men who are tenants in gavelkind, in the same manner and in the same places as grand assizes used to be held therefor; so that four tenants in gavelkind shall choose twelve tenants in gavelkind as jurors, as four knights have been accustomed to choose the twelve on the Grand Assize.' See *Close Rolls*, 16 Henry III. p. 32.





## APPENDIX A.

### ADDITIONAL RECORDS FROM THE EYRE ROLL.

#### COWYN *v.* IREMONGER. (p. 16.)

Assisa venit recognitura si Willelmus Cuwyne auunculus Ricardi Daniel fuit seisitus in dominico suo ut feodo de uno tofto et tribus acris terre et dimidio cum pertinenciis in Merstoun die quo etc. Et si etc. que Ricardus le Ismongere de Shorne tenet qui venit et dicit quod non debet ei inde ad hoc breui respondere etc. Quia dicit quod ipse est coniunctim feoffatus de predictis tenementis cum quibusdam Iohanna que fuit uxor Iohannis le Ismongere Agneta et Alicia filiabus eorundem Iohannis et Iohanne per cartam quandam Rogeri de Standoun et Iohanne uxoris eius quam profert et que hoc testatur etc. que quidem Iohanna que fuit uxor predicti Iohannis Agneta et Alicia non nominantur in breui etc. unde petit iudicium etc. Et Ricardus Danyel non potest hoc dedicere. Ideo consideratum est quod predictus Ricardus le Ismongere inde eat sine die et predictus Ricardus Danyel nichil capiat per breue istud set sit in misericordia pro falso clamore etc.<sup>1</sup>

#### HELLIS *v.* SANDWICH. (p. 43.)

Assisa venit recognitura si Thomas filius Thome de Sandwico et alii disseisuerunt Willelmum filium Iohannis de Hellis et Thomam fratrem eiusdem Willelmi de etc. Et predictus Thomas filius Thome dicit quod ipse nullam fecit iniuriam etc. Dicit enim quod predicta tenementa sunt de Tenura de Gauelkynde et tenebantur de Roberto nuper Archiepiscopo Cantuariensi etc. Et dicit quod talis est Consuetudo in Comitatu isto quod post mortem tenentium huiusmodi tenementorum de Archiepiscopatu heredibus eorum infra etatem existentibus seisisiri debent tenementa illa in manus ipsius Archiepiscopi qui pro tempore fuerit qui quidem Archiepiscopus habebit Custodiam predictorum tenementorum et Nutrituram Heredum predictorum usque ad plenam etatem eorundem secundum Consuetudinem predictam. Et dicit quod post mortem predicti Iohannis Patris predictorum Willelmi et Thome cuius heredes etc. predictus Archiepiscopus seisiuit tenementa predicta unde etc. in manum suam nomine Custodie in forma predicta et custodiam illam commisit et concessit Roberto de Dene propinquiore sanguine predictorum heredum cui tenementa illa descendere non potuerunt etc. Qui quidem Robertus custodiam predictam concessit cuidam Iohanni de Malemeyns et idem Iohannes ipsi Thome tenendam usque ad plenam etatem. Et dicit quod predicti heredes adhuc sunt infra etatem et hoc paratus est verificare per Assisam.

Ideo capiatur Assisa.

<sup>1</sup> *m.* 24.

Iuratores dicunt super sacramentum suum quod predicti heredes non sunt plene etatis secundum consuetudinem de Gauelkynde.

Ideo consideratum est quod predictus Thomas filius Thome eat inde sine die et predicti Willelmus et Thomas nichil capiant per Assisam etc.<sup>1</sup>

WOOD v. DAGENHAM. (p. 141.)

Assisa venit recognitura si Iohannes de Daggeworth Lora que fuit uxor Willelmi Peyforrer Hamo Peuerel Iohannes de Esthalle et Ricardus de Honewyk iniuste disseisiuerunt Iohannem du Boys et Petronillam uxorem eius de libro tenemento suo in Cantuaria et Roffa post primam etc. Et unde iidem Iohannes du Boys et Petronilla per attornatum suum queruntur quod disseisiuerunt eos de tercia parte proficui provenientis de balliua marescalcie de Itinere Iusticiariorum cum pertinenciis etc.

Et Iohannes de Daggeworth et alii non veniunt set quidam Iohannes de Bulmere venit et respondet pro eis tanquam eorum balliuis. Et dicit quod non debent predictis Iohanni de Boys et Petronille ad hoc breue ad huiusmodi querelam respondere etc. dicit enim quod balliua predictae marescalcie habet ministrari in Itineribus Iusticiorum in singulis comitatibus regni etc. Et ex quo queruntur disseisiri de predicta tercia parte proficui in predictis duabis villis Cantuaria et Roffa tantum petit iudicium etc.

Et Iohannes du Boys et Petronilla dicunt quod habent liberum tenementum in tercia parte predicti proficui percipiendi etc. et quod eadem tercia pars assignata est eidem Petronille in dote per assignacionem domini Regis ex dotacione Simonis del Eschequer primi viri sui etc. Et unde disseisita fuit per predictos Iohannem de Daggeworth et alios et ad quod iidem Iohannes et alii non respondent etc. et petunt iudicium etc. et quod procedatur ad assisam capiendam etc.

Dies datus est eis coram Iusticiariis apud Westmonasterium in octabis Sancti Iohannis Baptiste etc. Et sciendum quod recordum et processus cum breui originali et pannello mittentur coram Iusticiariis de Banco.<sup>2</sup> etc.

*A letter from the King to the Justices touching the above action.*

Edwardus dei gratia etc. Iusticiariis suis itinerantibus in comitatu Kancie salutem. Ex querela dilecti et fidelis nostri Iohannis de Dagewotthe nobis est ostensum quod cum ipse in Singulis Itineribus infra Regnum nostrum Marescallus<sup>3</sup> noster de feodo sit ac omnia que ad officium predictum durantibus Itineribus predictis pertinent exercere et percipere debeat prout antecessores sui Marescalli temporibus progenitorum nostrorum quondam Regum Anglie ea a tempore quo non exstat memoria exercere et percipere consueuerunt vos tamen ipsi Iohanni quo minus ea que ad officium predictum coram vobis in Itinere vestro in comitatu predicto exercere et percipere valeat

<sup>1</sup> m. 8.

<sup>2</sup> m. 125.

<sup>3</sup> I have not been able to find any account of the duties of the Marshals of the Justices in Eyre. They seem to have been responsible for the billeting of persons attending the Eyre (see Vol. I., p. xxiii.) They received part of the court fees (Vol. I. p. 176). They are among the officials named in cap. xxx. of the first Statute of Westminster as being guilty of extortion.



impeditis minus iuste in ipsius Iohannis dispendium non modicum et grauamen ac exheredacionis sue periculum manifestum. Et quia eidem Iohanni iniurari nolumus in hac parte vobis mandamus quod si ita est tunc ab huius modi impedimentis eidem Iohanni de cetero inferendis penitus desistentes ipsum ea que ad officium predictum coram vobis in Itinere vestro predicto pertinet exercere et percipere permittatis prout antecessores sui predicti ea temporibus predictis exercere et percipere consueuerunt. Teste me ipso apud Westmonasterium xv. die Octobris anno regni nostri septimo.<sup>1</sup>

SPELMENDENNE v. THE ABBOT OF ROBERTSBRIDGE.

(p. 167.)

Iohannes Abbas de ponte Roberti summonitus fuit ad respondendum Nicholao de Spelmendenne de placito quod permittat ipsum habere comunam pasture in Lamberherste et Horsmondenne scilicet comunandi in quater viginti acris pasture et bosci cum omnimodis aueriis per totum de qua Rogerus quondam Abbas de ponte Roberti predecessor predicti Abbatis iniuste etc. disseisiuit Nicholaum de Spelmendenne patrem predicti Nicholai cuius heres ipse est post primam etc.

Et unde idem Nicholaus per attornatum suum dicit quod predictus Nicholaus pater etc. fuit seisitus de predicta comuna ut de feodo et iure tempore pacis tempore domini Edwardi Regis patris domini Regis nunc capiendo inde expletias ad valenciam etc. Et de ipso Nicholao descendit ius etc. isti Nicholao qui nunc queritur ut filio et heredi, etc. Et de qua etc. Et inde producit sectam etc.

Et Abbas per attornatum suum venit et defendit vim et iniuriam quando etc. et dicit quod non debet inde respondere etc.

Postea predictus Nicholaus non est prosecutus. Ideo predictus Abbas inde sine die et predictus Nicholaus et plegii sui de prosecutione in misericordia.<sup>2</sup>

<sup>1</sup> m. 228.

<sup>2</sup> m. 49 d.

## APPENDIX B.

PATENT AND CLOSE ROLLS REFERRING TO THE EYRE OF  
KENT OF 6 AND 7 EDWARD II.

The page references are to the *Calendars of the Patent Rolls* and of the *Close Rolls* respectively of the years noted.

## PATENT ROLLS.

(1) May 23, 1313. Commission appointing Hervey of Staunton, John Wogan, Henry Spigurnel, John of Mutford, and William of Goldington to be Justices in Eyre in the county of Kent, and also to hear and determine all pleas of franchises according to the ordinances, and all complaints as well against the King's bailiffs and ministers as against all other bailiffs and ministers. *Calendar of Patent Rolls* 1307-1313, p. 589; and see p. 596, under May 23.

(2) May 23. Appointment of William of Ormesby in place of John Wogan. p. 596.

(3) June 3. Mandate to Robert de Hauville, King's clerk, to whom W. Bishop of Worcester, Keeper of the Great Seal by reason of his office of Chancellor, has committed the custody of the writs and rolls in the next Eyre of the Justices itinerant in the county of Kent, until the King shall order otherwise, that he diligently attend to that custody. Mandate also to the said Justices to deliver into his custody the above-mentioned writs and rolls. p. 592.

(4) July 26, 1313. Pardon to William of Derby for conspiracy, and grant to him of power to prosecute and defend his own lawful and honest matters notwithstanding the proclamation by the Justices of the Eyre disabling persons convicted of any conspiracy from prosecuting or defending any matters before the said Justices. *Calendar of Patent Rolls*, 1313-17, p. 9.

(5) September 18, 1313. Similar pardon to William of Broomfield (Bernefeld), p. 16.

(6) October 17, 1313. The like to John of Houking. p. 28.

(7) February 17, 1314. Pardon to William at Stighle for manslaughter committed in self-defence. p. 85.

(8) February 22, 1314. Mandate to the Justices to permit the Archbishop to receive and to have the fines and amercements of the men and tenants of the Archbishopric, and the chattels of men and tenants of the same, felons, fugitives, and condemned persons, and also year, day, and waste of the lands of felons, fugitives, and of persons condemned in the Eyre from October 21 last, as his predecessors were accustomed to receive them. They are to make a division of the fines, amercements, chattels, year, day, and waste before October 21 and after, in the extracts to be delivered to the Exchequer, that the treasurer and barons thereof may know of those

things of which the Archbishop was challenged which were adjudged after October 21. p. 88.

(9) March 8, 1314. William de Grey having been presented in Eyre for diverting a certain King's highway 'by making another new way in a place adjacent to that way, which is more fit, straighter and drier at all seasons of the year than the old one, and that it is not to the King's loss if the way is so diverted, and further that the newly made road is more convenient for people passing there than the old one,' the King grants a licence to him and his heirs that they may retain, without let or hindrance, the old way so diverted, provided that the newly made way shall remain of the breadth of twenty feet at least for all persons passing there. p. 91.

(10) March 10, 1314. Pardon to John the Cook for the death of Philip the fisher, whom he killed in self-defence. p. 92.

(11) February 26, 1314. Similar pardon to Robert Giffrey for the death of John, son of Boiden the clerk. p. 93.

(12) March 16, 1314. Similar pardon to Ralph, son of John of Broad Street, for the death of Robert of Eyton. p. 94.

(13) April 1, 1314. Pardons to Walter of Frindsbury, John Page, Geoffrey Page, and John Clarkson, for divers robberies and trespasses. p. 102.

(14) May 9, 1314. Further grant to Walter, Archbishop of Canterbury, of the fines, amercements, etc., of the men and tenants of the Archbishopric of Canterbury, 'as well before the King's Justices in Eyre in the county of Kent as elsewhere in his courts before other of his justices,' from the day when the temporalities of the Archbishopric by reason of the death of the late Archbishop fell into the King's hands. p. 119.

(15) June 25, 1314. Re-grant of the manor of Devyngton to John of Brunston taken into the King's hand by the Justices of the Eyre. p. 126.

(16) March 11, 1315. Pardon to William of Sutton of his outlawry for not appearing before the Justices of the Eyre to answer for the rape and abduction of Agnes, the wife of Simon Grey, and the carrying away of his goods. p. 266.

(17) April 21, 1316. Pardon to Martin of Ramhurst of his outlawry for not appearing before the Justices in Eyre to answer Isabella Pygot touching a trespass against her. p. 450.

(18) May 6, 1316. Pardon to John atte Pende of all conspiracies of which he was convicted before the Justices in Eyre, with restoration to him of his former status. p. 454.

(19) August 26, 1316. Pardon to John Mot of his outlawry for not appearing before the Justices in Eyre to answer for the death of William of Maidstone, and for escaping from the prison of the Archbishop, to which he had been committed as a clerk; pardon also for the death of the said William of Maidstone. p. 538.

#### CLOSE ROLLS.

(20) July 17, 1313. Order to the Justices in Eyre to attermine to the end of the Eyre all pleas touching J. Bishop of Bath and Wells. *Calendar of Close Rolls*, 1313-18, p. 2.



(21) September 18. Order to adjourn to the end of the Eyre all pleas touching Aymer of Valencia, Earl of Pembroke. p. 12.

(22) September 25. Like order as to the matters touching the men of Lydd and Dungeness, who assert that they belong to the liberty of the Cinque Ports, and to cause the bodies of men of those places indicted before them of trespasses or felonies, and all their goods and chattels taken into the King's hands, to be delivered to Robert of Kendal, Warden of the said ports, or to William of Bernefeud, who supplies his place. p. 12.

(23) September 28. Order to respite until the quindenenes of Michaelmas all matters touching Juliana and Henry of Leyburne, Geoffrey of Say, Fulk Payforer and Edmund Gacelyn.<sup>1</sup> p. 13.

(24) October 26. Order to the Justices to take fines for the King's use from those convicted and adjudged to prison for trespasses in parks and stews who are willing to make fine for the remainder of their term of imprisonment, and for what pertains to the King of the said trespasses. p. 19.

(25) October 10. Order to the Justices to permit all writs delivered to the Sheriff before Saturday, the Eve of SS. Simon and Jude, to be received and pleaded in Eyre, notwithstanding their proclamation that all such writs should be delivered before the Sunday after Michaelmas. p. 20.

(26) November 12. To the Sheriff of Kent. Order to pay out of the clearest fines and amercements of the Eyre of Hervey of Staunton, William of Ormesby, Henry Spigurnel, John of Mutford and William of Goldington, 60 marks to Hervey, 50 marks to William, and 40 marks each to the others, for their expenses in the Eyre. p. 24.

(27) November 29. Order to the Justices to adjourn all pleas touching Aymer de Valencia, Earl of Pembroke, until after Christmas, as the Earl is going with the King to parts beyond sea, the King having lately ordered them to adjourn such pleas until the end of the Eyre. p. 31. See (21) above.

(28) January 8, 1314. Order to the Justices further enlarging the time within which writs may be delivered to be received and pleaded in the Eyre to the Sunday in the octaves of St. Hilary. p. 36.

(29) January 16. Order to proceed to judgment in the plea of Walter Potekyn and his wife against the Prior of Christ Church, Canterbury, and, before judgment rendered, to send the record and the process to the King in Parliament.<sup>2</sup> p. 36.

(30) February 7. Order to the Justices to continue until the quindenenes of Easter all pleas in the Eyre touching the lowey of Tunbridge with the hundred of Littlefeud. p. 40.

(31) February 6. Repetition of (24). p. 41.

(32) March 27. To Hervey of Staunton. Order to send to the Exchequer at Westminster without delay the estreats of all fines, ransoms and amercements of the time when he and his fellows were Justices of Eyre in Kent, to be delivered to him who supplies the place of the treasurer and to the barons

<sup>1</sup> This order touching E. Gacelyn was renewed on October 12 and November 2 (pp. 16 and 18).

<sup>2</sup> There is no record in the *Rolls of Parliament* of this having been done.

of the Exchequer, notwithstanding that they have adjourned pleas touching certain liberties in that county, provided that they send the rest of their estreats to the Exchequer at the end of the Eyre. p. 44.

(33) April 1. To Hervey of Staunton and his fellows, Justices in Eyre in the county of Kent. Order to cause Adam of Osgodby, Keeper of the house of *Conversi*, London, to have the King's alms called deodands from their Eyre, in aid of the repair and maintenance of the buildings and the maintenance of the *Conversi*; the late King having granted deodands to the *Conversi* for the completion of the fabric of their chapel which Henry II. founded, and in aid of the repair and maintenance of the buildings there. p. 46.

(34) April 27. Order to the Justices to proceed with all speed to take all assizes of novel disseisin and mortdancestor instituted by the King's writs before them in their Eyre and before other Justices in that county, and to do justice therein to the parties, as the King wishes to accelerate justice because other Justices appointed to take assizes in that county ought not to take such assizes during the Eyre. p. 50.

(35) May 27. Order to the Justices to adjourn all matters touching Bartholomew of Badlesmere concerning the liberties claimed by him before the King until the octaves of Michaelmas; the King wishing to show favour to the said Bartholomew, who is now in Scotland in his service. p. 57.

(36) July 13, 1313. Order to the Justices not to put William Inge in default by reason of the common summons of the Eyre, as the King has ordered him to attend personally the common pleas in the King's Bench together with the other Justices, so that he cannot be present at the day of the common summons of their Eyre. p. 66.

(37) November 10. Order to the Justices not to put John of Benstead in default by reason of the common summons of the Eyre before them, as the King has warranted his absence. p. 80.

(38) November 15. Order to the Justices to examine the rolls of the Justices in Eyre of the time of Henry III. and before, which are before them in their Eyre, and if they find that the Justices in Eyre were wont to enter the lowey of Tunbridge and hold pleas touching the same, they are then to sit in the lowey before they leave the county, and to hold pleas therein, unless there be any reason why they should not, in which case they are to certify the King, as Gilbert de Clare, Earl of Gloucester and Hertford, has shown the King by petition that the Justices of Henry III. were wont to sit in the said lowey, and that the Justices since that time have omitted to do so. p. 80.

(39) November 20. Order to the Justices not to put William Grandison in default by reason of the common summons of the Eyre before them, as the King has warranted his absence. p. 82.

(40) November 28. Order to the Justices to remit certain matters touching Bartholomew of Badlesmere and Thomas Dod to Parliament. p. 84.

(41) February 1, 1314. Order to the Justices to att termine until the next Parliament all matters in the Eyre touching the liberties of Walter, elect of

Canterbury, as the King has only recently restored to him the temporalities of the Archbishopric, and has charged him with certain affairs touching the King and his realm, so that he cannot appear before them to defend his liberties. p. 90.

(42) November 28. Order to the Sheriff of Kent to supersede until the next Parliament his demand for £6 from Adam Hurel for the issues of certain houses formerly belonging to the friars of the Penance in Canterbury, which he claimed as his escheat and which were taken into the King's hands by the Justices, as the King has caused the record and the process to be brought before him, because Adam alleges error in the same. p. 128.

(43) December 6. Order to the Sheriff of Kent to restore to Elias Porth of Maidstone his lands and goods and chattels, taken into the King's hands upon his indictment before the Justices last in Eyre in that county for a robbery at the house of the rector of Maidstone, as he has purged his innocence before W. Archbishop of Canterbury, the diocesan, to whom he was delivered according to the privilege of clergy. p. 379.

(44) November 28, 1317. To the treasurer and barons of the Exchequer. Order to supersede the demand upon William of Goddington for 5 marks for a fine that he made with the King upon his conviction before Hervey of Staunton and his fellows, Justices in the last Eyre in the county of Kent, for a trespass upon William of Bridge and Joan his wife against the late King's peace, whereof he was convicted before them, and for which he was adjudged to prison in error, whence he was released upon making the above fine, and to discharge him of the fine, as it was considered before the King, who caused the record and process to come before him, that the demand upon the aforesaid William for the fine should be wholly superseded, because the trespass was made contrary to the late King's peace and not contrary to the present King's, as appears by the record and process had before the King, which the King has caused to come before him in chancery. p. 513.



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demandant's ancestor died seised and that the demandant is next heir ; but he should plead that he, the defendant, is not fully tenant of the demandant's demand.		possession for a day and then died, the ancestor died sufficiently seised to give the demandant the right to recover by a mortdancestor. If there had been no agreement <i>semble</i> that he would have had to proceed by a writ of entry <i>sur disseisin</i> .	
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When a man gives tenements to a woman and her heirs and delivers seisin and afterwards marries the woman, he does not become seised of the tenements in his own demesne as of fee.		Husband and wife are enfeoffed jointly by a disseisor. Assize of novel disseisin subsequently brought by disseisee against the joint feoffees and their feoffor. During the pendency of the assize the wife dies, and the disseisee recovers. Held here that though the wife died seised her estate was extinguished by the judgment, and that her heirs cannot recover aught by mortdancestor.	
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The tenant pleads to an assize of mortdancestor the 'latest seisin' of the legitimate brother of the demandant. It is a good answer if the demandant say that such brother was his younger brother and not the heir of his father. Voucher beyond the four seas of England is receivable only in the case of exchanges.

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When the tenant of a freehold only makes default under a possessory writ the reversioner will not be received to defend his right.

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Where it was held as in the preceding case.

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A question of legitimacy cannot be tried under a possessory writ.

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<b>Terry v. Ronwell</b> . . . . .	60
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A demandant cannot be ousted from an assize of novel disseisin by the defendant's disclaimer of interest in the freehold. Under a writ of novel disseisin damages are recoverable only in respect of the vesture of the freehold. In respect of other damage sustained, the demandant must have recourse to a writ of trespass.

<b>Sturry v. Cobham</b> . . . . .	65, 70
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Recovery by writ of novel disseisin cannot be had against one who has only a tenancy as of freehold under Statute Merchant, nor against one having only a life estate.

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An assize of novel disseisin can assess damages in respect of the issues of the soil only.

<b>Bakewell v. Wandsworth</b> . . . . .	75
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If a man alienate land of his wife's right and then disseise the feoffee, the latter will not get an assize of novel disseisin unless he join the wife; and upon the husband's death the wife will be entitled to her *cui in vita* if judgment have gone against her.

<b>Walton v. Hoath</b> . . . . .	79
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A tenant in possession does not die lawfully seised if at the time of his death a judgment against him for the recovery of the tenements remains unexecuted, and if he cannot show a fresh title later than the judgment.

<b>Anon. v. Anon.</b> . . . . .	85
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A debtor's bond is made for the purpose of giving security for money owed, and cannot convey an estate of inheritance even though it recite that if the money be not paid by a certain day the creditor may enter the debtor's land.

<b>Anon. v. Anon.</b> . . . . .	86
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Husband and wife suing jointly cannot have a *retraxit*, for the wife is *coverte* and cannot be examined.

<b>Broomfield v. Broomfield</b> . . . . .	87
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An infant does not forfeit his right by acquiescence in his co-heir's entry upon the whole inheritance.

<b>Lewis v. Monner</b> . . . . .	90
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Though an illegitimate brother do not actively disseise his legitimate sisters, yet he becomes a disseisor liable in damages by counterpleading to their action for recovery.

<b>Heymes v. Horne</b> . . . . .	94
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The aunt by the whole blood will take before the uncle by the half blood.

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<b>Burn v. Burton</b> . . . . .	96	<b>Grandison v. Seoland</b> . . . . .	119
Question whether the Archbishop or, <i>sede vacante</i> , the King, as lord of the soil, should be joined in a writ seeking to recover the custody of the door of the Archbishop's manor house in Canterbury.		Where the tenements were originally granted to one R. and the heirs of his body with remainder, in failure of such heirs, to the grantor and his heirs. Afterwards, during R.'s seisin, the grantor released and quitclaimed to R., who subsequently died without heir of his body, to hold of the chief lord. The chief lord recovers the tenements.	
<b>Norton v. Aston</b> . . . . .	99	<b>Anon. v. Anon.</b> . . . .	120
An assize of novel disseisin cannot be had to recover parcel of a rent service, the plaintiff being seised of the rest. His remedy is by distress.		Question whether one can have an assize of novel disseisin to recover tenements into which he has already attempted to abate himself. Held that he can if his father died solely seised and he himself be his father's heir.	
<b>Marden v. Marden</b> . . . . .	102	<b>Hayes v. Lefevre</b> . . . . .	121
A grant by a son to his father of all the lands and tenements which he has or may have of the inheritance of his mother grants his share of the half of the inheritance holden by his father by the law of England after his mother's death, and his father is entitled in virtue of such grant to retain such share after a subsequent marriage.		A tenant dies seised, leaving a son, who is beyond sea, and daughters. The daughters enter and alienate. Twenty years afterwards the son returns. Question whether the son can enter upon the alienated land.	
<b>Frittenden v. Culverhouse</b> . . . . .	109	<b>The Abbot of Rufford v. Anon.</b> . . . .	123
In an assize of novel disseisin of a rent charge all the tenants of the land upon which the rent is charged must be named in the writ.		An assize of novel disseisin cannot be had in respect of a parcel of a toll when the demandant is fully seised of a parcel.	
<b>Frittenden v. Frittenden</b> . . . . .	111	<b>Anon. v. Goodyear</b> . . . . .	124
When a writ has been abated by reason of the omission of a tenant of part of the demand an amended writ, joining such tenant, will not be abated on the ground of similar omissions, for repetition of such exceptions shows malice. Exception to a writ upon the ground of the joinder as tenant of one whom the defendant compelled the plaintiff to join will not be allowed. When it has been found by assize that one of two parceners holding in common has disseised the other, such other parcener will recover a moiety to hold in severalty.		Question of responsibility for damages. Where the actual disseisor has no effects the tenant for a number of years must pay them.	
<b>Simon v. Bristol</b> . . . . .	116	<b>Anon. v. Anon.</b> . . . .	124
Questions of pleading. One or other of two peremptory replications must be abided by. A plaintiff cannot plead prospectively to a hypothetical finding by an assize, though a defendant may do so.		An assize of novel disseisin ought not to be had in absence of a specialty in respect of what is merely a <i>profit à prendre</i> .	
		<b>Anon. v. Anon.</b> . . . .	125
		A writ of novel disseisin will not abate by reason of a married woman being named as a defendant without her husband being joined, unless she answer as tenant.	



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<b>Anon. v. Topinel</b> . . . . .	126

A. grants his tenements to B. by way of mortgage to secure the repayment of 48s. The deed sets out that the money shall be repaid by a certain day. If it be so repaid, the deed, which is deposited with a neutral party, is to be delivered to A. and to be void. A. repays B. 12s. previously to the appointed day, and afterwards, but also previously to the appointed day, tenders the balance. B. refuses to accept it and demands the whole sum originally due. A. refuses to pay it, and puts himself on the land. B., who has improperly obtained possession of the deed, ejects him. After B.'s death his sons enter, and A. brings action against them for the recovery of his land. Judgment that he recover his seisin. It was also said that B.'s executors could not recover the debt.

<b>Carbonel v. Hayward and Wickham</b> .	128
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The defendant diverts the course of a stream to the damage of the plaintiff, who brings a writ of novel disseisin. The defendant must restore the stream to its old course at his own cost, and must pay the plaintiff his damages.

<b>Gravesend v. Port</b> . . . . .	129
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A writ that lays the land in demand as 'plots of land' is amendable if it really consist of plantations. 'Plots of land' and 'plantations' must be laid separately.

<b>Bampton v. Bolham and Ross</b> . . .	131
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Question of pleading under the Statute of Joint Feoffees.

<b>Anon. v. Anon.</b> . . . .	131
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Though the defendant plead outside the point of the assize and the plaintiff thereupon joins issue, the defendant may subsequently say that he is willing to hear the recognition of the assize.

<b>Wilton v. Sturry</b> . . . . .	132
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A feoffor cannot enter upon the tenements during the seisin of the feoffee without having livery.

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<b>Walton v. Beer</b> . . . . .	133

Question whether a married woman who is a professed nun can be received as plaintiff. The matter is referred to Court Christian.

<b>Goldsmith v. Dower</b> . . . . .	133
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One who has been found a disseisor cannot bring an assize of novel disseisin to recover the tenements in respect of which he was found a disseisor unless he can say that he has been seised subsequently.

<b>Anon. v. Beaumont</b> . . . . .	134
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Under a writ of novel disseisin where the further hearing is remitted into Bank and the defendant does not appear, the assize will be awarded, but the plaintiff must sue out the record of the previous proceedings. *Secus* in a mortdancesthor.

<b>Anon. v. Anon.</b> . . . .	134
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A statute does not change the process given by the common law unless it expressly purports to do so.

<b>Passendenne v. Kenardington</b> . . .	135
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One that disseises them whom himself has enfeoffed and put into seisin will be sent to prison.

<b>Tilmanstone v. Sandhurst</b> . . . . .	139
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A plaintiff is not barred from his assize of novel disseisin by the fact of his having quitclaimed if he allege the subsequent seisin of one whose heir he is.

<b>Anon. v. Anon.</b> . . . .	141
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A writ of novel disseisin of profits must lay the profits as taken in a place certain.

<b>Anon. v. Anon.</b> . . . .	142
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*Semble* that if a father disseise a son and alienate the tenements and bind himself and his heirs to warranty, the son will not get an assize of novel disseisin unless he can show a subsequent seisin.

<b>Anon. v. Anon.</b> . . . .	143
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Under a writ of novel disseisin where the tenant pleads a title by right the



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plaintiff will not get to the assize unless he show by what title a freehold accrued to him. But see <i>Anon. v. Anon.</i> , p. 145. <i>The Prior of Southwark v. The Abbot of Westminster</i> 144.		<b>The King v. Inge and Carrol</b> . . . . .	168
Question whether an assize of novel disseisin should be awarded without the King being consulted in respect of a rental charged upon tenements granted by the King and charged by him with certain pious and charitable services.		Question whether two persons having different estate—the one by purchase, the other by succession—can join in claiming a franchise. <i>Semble</i> that they can.	
<b>Anon. v. Anon.</b> . . . . .	145	<b>The King v. Badlesmere</b> . . . . .	169
A plaintiff, if he be an infant, will get to his assize of novel disseisin without being compelled to show any title.		Questions touching franchises. It is said that the King cannot grant a franchise in restraint of his own power.	
<b>Croft v. Croft</b> . . . . .	147	<b>The King v. Lenham</b> . . . . .	174
It is a good answer to a <i>nuper obiit</i> to say that the plaintiff is seised of part of the heritage in right of his share; but he may have a writ of right <i>de rationabili parte</i> . It is said that a writ of intrusion does not lie between parceners.		A respondent, whose franchises, by reason of his own default, have been seized into the King's hand must replevy them during the continuance of the Eyre or lose them for ever.	
<b>Gatwick v. Gatwick</b> . . . . .	152	<b>The King v. Leyburne</b> . . . . .	174
Question as to the enfranchisement of gavelkind land.		Question whether a franchise can be claimed by the husband alone in right of his wife.	
<b>Cauville v. Drax</b> . . . . .	159	<b>The King v. Say</b> . . . . .	177
The statute of Gloucester, cap. ii., favouring infant plaintiffs in actions of cosinage, ael and besael does not apply to actions by writ of <i>nuper obiit</i> .		<i>Semble</i> that an infant cannot claim a franchise. When inquest is taken as to the use of a franchise the inquiry will extend to the time previous to the last Eyre as well as to the subsequent time.	
<b>The Abbot of Battle v. The Prior of Christ Church</b> . . . . .	161	<b>The King v. Wickham Breauz</b> . . . . .	179
A writ of <i>quare non admisit</i> must state the name of the presentee. A letter testimonial of excommunication will not be received unless the writer of it states definitely the reason of the excommunication and that he has jurisdiction over the excommunicated person.		Question whether a purchaser can plead prescription in answer to a <i>quo warranto</i> . A respondent may, if the circumstances permit him, claim a franchise either as heir or purchaser.	
<b>Spelmendenne v. The Abbot of Robertsbridge</b> . . . . .	167	<b>The King v. Shirland</b> . . . . .	181
If a plaintiff be claiming to recover common of pasture as a gross he must lay it as being appurtenant to his freehold.		A franchise by grant from the King does not pass by feoffment; <i>secus</i> if the franchise be appendant.	
		<b>The King v. Anon.</b> . . . . .	182
		Where a franchise is granted upon condition of an annual payment to the Exchequer, evidence of payment must be tendered in answering a <i>quo warranto</i> .	
		<b>The King v. The Prior of Dover</b> . . . . .	183
		Where proof of the user of franchises cannot be found in the rolls of	

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previous Eyres, a jury may find such user. The levying of a fixed sum upon all who land at a certain port cannot be assigned to compensation for trespass. It savours of a royal right.		
<b>The King v. The Prior of Leeds . . . . .</b>	<b>184</b>	
Where the respondent to a <i>quo warranto</i> claims in virtue of a charter from the King he is not to be prejudiced by his failure to claim at the commencement of the Eyre.		
<b>The King v. The Prioress of Holywell. 187</b>		
A claim to franchises based upon prescription made at the commencement of the Eyre cannot be subsequently amended. <i>Secus</i> if the franchises are claimed in virtue of a charter.		
<b>The King v. Grandison . . . . .</b>	<b>188</b>	
A respondent to a writ of <i>quo warranto</i> will be allowed to replevy franchises that have been seized into the King's hand by reason of his previous default.		
<b>The King v. Walsh . . . . .</b>	<b>189</b>	
<i>Semble</i> , that a franchise of which an Archbishop has been seised in right of his office cannot, <i>sede vacante</i> , be challenged by the King in the hands of another. The right of action will be in the Archbishop, when appointed.		
<b>The King v. The Abbess of Malling . 189</b>		
Question whether a claim made by a bailiff only at the commencement of the Eyre is of record and binding upon the principal. Further question the statute <i>de quo warranto</i> applies to faulty claims made at the commencement of the Eyre.		
<b>The King v. Anon. . . . .</b>	<b>190</b>	
A franchise that has been extinguished by alienation of the manor is not revived by the subsequent repurchase of the manor by the alienor.		
<b>The King v. The Abbot of Faversham . 190</b>		
It is a good averment by an Abbot of F. in answer to a <i>quo warranto</i> to aver that the manor to which the challenged franchise is appurtenant was in the seisin of a certain King who granted the manor, &c., to the Abbot of F. and his successors who have used the franchise from ancient times, &c., but it is questionable whether an alienee would be received to a similar averment.		
<b>The King v. The Abbot of Reading . 191</b>		
Showing how the King is advantaged by the granting of free warren.		
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attempt of this sort has previously been made in England. A large part of the work is derived from hitherto unpublished sources, and of the residue a great deal has been obtained from books that are not generally accessible or treat only of the affairs of some one town. The first volume deals exhaustively with crime, tort, and procedure. The Introduction discusses the growth of customary law in the boroughs, and contains a bibliography of customals already published.

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- Vol. XXII., for 1907. YEAR BOOKS SERIES. Vol. IV. YEAR BOOKS of EDWARD II. (A.D. 1310). Edited, from sundry MSS., by the late Professor F. W. MAITLAND and G. J. TURNER, M.A., of Lincoln's Inn, Barrister-at-Law. Crown 4to. Price to non-members, 28s.

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Vol. XXIV., for 1909. YEAR BOOK SERIES. Vol. V. THE EYRE OF KENT of 6 and 7 EDWARD II. (A.D. 1313-4). Vol. I. Edited, from sundry MSS., by the late Professor MAITLAND, the late Mr. L. W. VERNON HARCOURT, of Gray's Inn, Barrister-at-Law, and Mr. W. C. BOLLAND, of Lincoln's Inn and the North-Eastern Circuit, Barrister-at-Law. Crown 4to. Price to non-members, 28s.

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and trading classes; the organisation of municipalities, and in particular Newcastle and Bristol; manorial tenures and the position of villeins. All of these matters are further illustrated in a full Introduction, which also deals with the development of (1) the constitution, and (2) the process of the Court of Star Chamber.

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This is a continuation of Vol. XXIV., comprising the civil pleas arranged in alphabetical order from Account to Mesne. The Introduction discusses many of these cases. It also treats of a remarkable procedure by Bills in Eyre, not hitherto observed, adapted to the prompt disposal of the suits of poor persons; makes a further contribution to the vexed question of the authorship of the Year Books, criticising Mr. Pike's theory; and concludes with a reprint, translation, and criticism of a 13th-century treatise on Mediæval French orthography found in Lincoln's Inn Library. A frontispiece reproduces in collotype a facsimile of a portion of one MS. of this Year Book, containing a specially obscure passage, by way of illustration of the materials used.

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*The Volumes in course of preparation are:*

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# R U L E S

1. The Society shall be called the Selden Society.

2. The object of the Society shall be to encourage the study and advance the knowledge of the history of English Law, especially by the publication of original documents and the reprinting or editing of works of sufficient rarity or importance.

3. Membership of the Society shall be constituted by payment of the annual subscription, or, in the case of life members, of the composition. Form of application is given at the foot of page 266.

4. The annual subscription shall be £1. 1s., payable in advance on or before the 1st of January in every year. A composition of £21 shall constitute life membership from the date of the composition, and, in the case of Libraries, Societies, and corporate bodies, membership for 30 years.

5. The management of the affairs and funds of the Society shall be vested in a President, two Vice-Presidents, and a Council consisting of fifteen members, in addition to the *ex-officio* members. The President, the two Vice-Presidents, the Literary Director or Directors, the Secretary, and the Treasurer shall be *ex-officio* members. Three shall form a quorum.

6. The President, Vice-Presidents, and Members of the Council shall be elected for three years. At every Annual General Meeting such one of the President and Vice-Presidents as has, and such five members of the Council as have, served longest without re-election, shall retire.

7. The five vacancies in the Council shall be filled up at the Annual General Meeting in the following manner: (a) Any two Members of the Society may nominate for election any other member by a writing signed by them and the nominated member, and sent to the Secretary on or before the 14th of February. (b) Not less than fourteen days before the Annual General Meeting the Council shall nominate for election five members of the Society. (c) No person shall be eligible for election on the Council unless nominated under this Rule. (d) Any candidate may withdraw. (e) The names of the persons nominated shall be printed in the notice convening the Annual General Meeting. (f) If the persons nominated, and whose nomination shall not have been withdrawn, are not more than five, they shall at the Annual General Meeting be declared to have been elected. (g) If the persons nominated, and whose nomination shall not have been withdrawn, shall be more than five, an

election shall take place by ballot as follows : every member of the Society present at the Meeting shall be entitled to vote by writing the names of not more than five of the candidates on a piece of paper and delivering it to the Secretary or his Deputy, at such meeting, and the five candidates who shall have a majority of votes shall be declared elected. In case of equality the Chairman of the Meeting shall have a second or casting vote. The vacancy in the office of President or Vice-President shall be filled in the same manner (*mutatis mutandis*).

8. The Council may fill casual vacancies in the Council or in the offices of President and Vice-President. Persons so appointed shall hold office so long as those in whose place they shall be appointed would have held office. The Council shall also have power to appoint Honorary Members of the Society.

9. The Council shall meet at least twice a year, and not less than seven days' notice of any meeting shall be sent by post to every member of the Council.

10. The Council may appoint a Literary Director or Directors, a Secretary, a Treasurer, and such other officers as they shall from time to time think fit, to hold office during the pleasure of the Council ; and may from time to time prescribe their respective duties ; and may make any arrangements for the remuneration of any officer which they may from time to time think reasonable.

11. It shall be the duty of the Literary Director or Directors (but always subject to the control of the Council) to supervise the editing of the publications of the Society, to suggest suitable editors, and generally to advise the Council with respect to carrying the objects of the Society into effect.

12. Each member shall be entitled to one copy of every work published by the Society as for any year of his membership. No person other than an Honorary Member shall receive any such work until his subscription for the year as for which the same shall be published shall have been paid. Provided that any member may be supplied with any publications on such terms as the Council may from time to time determine.

13. The funds of the Society, including the vouchers or securities for any investments, shall be kept at a Bank, to be selected by the Council, in the name of the Society. Such funds or investments shall only be dealt with by a cheque or other authority signed by the Treasurer, and countersigned by one of the Vice-Presidents or such other person as the Council may from time to time appoint.

14. The accounts of the receipts and expenditure of the Society up to the 31st of December in each year shall be audited once a year by two Auditors, to be appointed by the Society, and the report of the Auditors, with an

abstract of the accounts, shall be circulated together with the notice convening the Annual Meeting.

15. An Annual General Meeting of the Society shall be held in March 1896, and thereafter in the month of March in each year. The Council may upon their own resolution, and shall on the request in writing of not less than ten members, call a Special General Meeting. Seven days' notice at least, specifying the object of the meeting and the time and place at which it is to be held, shall be posted to every member resident in the United Kingdom at his last known address. No member shall vote at any General Meeting whose subscription is in arrear.

16. The Secretary shall keep a Minute Book wherein shall be entered a record of the transactions, as well at Meetings of the Council as at General Meetings of the Society.

17. These rules may upon proper notice be repealed, added to, or modified from time to time at any meeting of the Society. But such repeal, addition, or modification, if not unanimously agreed to, shall require the vote of not less than two-thirds of the members present and voting at such meeting.

*March 1909.*

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